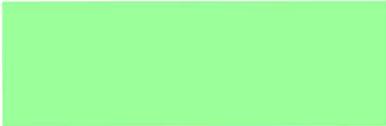




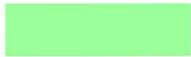
U.S. Citizenship
and Immigration
Services

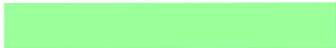
(b)(6)



Date: **JUN 18 2013**

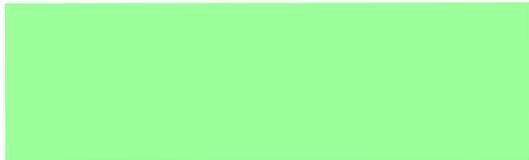
Office: HARLINGEN, TX

FILE: 

IN RE: Applicant: 

APPLICATION: Application for Certificate of Citizenship under Sections 301 and 309 of the Immigration and Nationality Act, 8 U.S.C. §§ 1401 and 1409.

ON BEHALF OF APPLICANT:

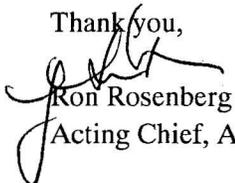


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630, or a request for a fee waiver. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,



Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Harlingen, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on September 21, 1990 in Mexico. The applicant's parents are [REDACTED]. The applicant's father was born in Texas on May 31, 1965. The applicant's parents were never married to each other. The applicant seeks a certificate of citizenship claiming that she acquired U.S. citizenship at birth through her father.

The field office director denied the applicant's citizenship claim upon finding that she had failed to establish that her father had agreed in writing to provide for her financial support as is required by section 309(a) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1409(a), as amended.

On appeal, the applicant, through counsel, maintains that the requirement of section 309(a)(3) of the Act is inapplicable in her case because she is over the age of 18. *See* Letter Brief in Support of Appeal. Thus, the applicant claims that she need not show that her father has agreed in writing to provide for her financial support. *Id.* In the alternative, counsel states that the documentary evidence submitted below is sufficient to demonstrate the father's financial support of the applicant.

The AAO reviews these proceedings *de novo*. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The applicable law for transmitting citizenship to a child born abroad when one parent is a U.S. citizen is the statute that was in effect at the time of the child's birth. *See Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1028 n.3 (9th Cir. 2001) (internal citation omitted). The applicant in the present matter was born in 1990. Section 301(g) of the Act, 8 U.S.C. § 1401, is therefore applicable to her case.

Section 301(g) of the Act provides, in relevant part, that the following shall be nationals and citizens of the United States at birth:

[A] person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years

The record reflects that the applicant's parents were never married to each other. The applicant was therefore born out of wedlock. Section 301(g) of the act, *supra*, is applicable to children

born out of wedlock only upon fulfillment of the conditions specified in section 309(a) of the Act.

Section 309(a) of the Act states, in relevant part:

(a) The provisions of paragraphs (c), (d), (e), and (g) of section 301 . . . shall apply as of the date of birth to a person born out of wedlock if-

- (1) a blood relationship between the person and the father is established by clear and convincing evidence,
- (2) the father had the nationality of the United States at the time of the person's birth,
- (3) the father (unless deceased) has agreed in writing to provide financial support for the person until the person reaches the age of 18 years, and
- (4) while the person is under the age of 18 years-
 - (A) the person is legitimated under the law of the person's residence or domicile,
 - (B) the father acknowledges paternity of the person in writing under oath, or
 - (C) the paternity of the person is established by adjudication of a competent court.

The record contains the results of a DNA test establishing the blood relationship between the applicant and her father. The applicant's father's birth certificate establishes his U.S. citizenship. The applicant's parents were not married to each other, and the applicant was not legitimated under the laws of Texas or Tamaulipas, Mexico.¹ The applicant's father was present when the applicant's birth was registered, so there is evidence that he acknowledged his paternity as required by section 309(a)(4)(B) of the Act. Nevertheless, the record does not establish that the

¹ According to a 2012 Library of Congress (LOC) report, the applicable law in Mexico relating to domestic relations issues, including legitimation, is the civil code of the states and not federal law. See LOC Report 2012-008315. Article 365 of the Civil Code for the State of Tamaulipas provides for the legitimation of a child born out of wedlock through express acknowledgement prior to or during the parents' subsequent marriage. *Id.* at 4 (citing the 1961 Civil Code, which superseded the previous code and was in effect until 1987).^[1] Legitimation could not be accomplished under the law simply by the acknowledgement of paternity on the birth certificate. *Id.* at 6. Thus, legitimation under the applicable laws of the State of Tamaulipas, Mexico can be established only upon the subsequent marriage of the applicant's parents.

With respect to legitimation under the laws of Texas, the record does not contain a court decree indicating that the applicant's father took any action to legitimate the applicant under section 13.21 of the Texas Family Code.

applicant's father has agreed in writing to provide financial support for the applicant until her eighteenth birthday.

The applicant maintains that the language of section 309(a)(3) of the Act, specifically the addition of the word "has," necessarily means that the applicant, who is already over the age of 18, need not submit her father's written agreement to provide for her financial support. Counsel does not offer any support for her interpretation of this subsection, nor does the AAO find it persuasive. Section 309(a)(3) of the Act states that the applicant must demonstrate that her father "has agreed in writing to provide financial support for [her] until [she] reaches the age of 18 years." The plain reading of section 309(a)(3) of the Act requires that the applicant submit evidence that her father has agreed in writing to financially provide for the applicant prior to her eighteenth birthday; it does not exempt applicants over the age of 18 from this requirement. See Chapter 7 Foreign Affairs Manual (FAM) §1133.4-2.

The record in this case does not contain any evidence of the applicant's father's written agreement to financially support her prior to her eighteenth birthday. The evidence submitted below, relating to the applicant's father's financial support, includes invoices for purchases made by the applicant's father as well as affidavits. Although this evidence may demonstrate that the applicant's father contributed to the applicant's financial support, it does not establish that the applicant's father agreed in writing to provide for the applicant's financial support until her eighteenth birthday as is statutorily required. The applicant therefore cannot fulfill the requirements of section 309(a)(3) of the Act, and did not acquire U.S. citizenship at birth through her father.

The burden in these proceedings is on the applicant to establish eligibility for U.S. citizenship by a preponderance of the evidence. Section 341 of the Act, 8 U.S.C. § 1452; 8 CFR § 341.2. The applicant in this case has not met her burden of proof. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.