



U.S. Citizenship
and Immigration
Services

(b)(6)

[REDACTED]

Date: JUN 21 2013

Office: EL PASO, TX [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under Former Section 301 of the Immigration and Nationality Act; 8 U.S.C. § 1401 (1971).

ON BEHALF OF APPLICANT:

[REDACTED]

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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must 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, El Paso, Texas, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on March 15, 1971 in Mexico. The applicant's parents, as indicated on his birth certificate, are [REDACTED]. The applicant's parents were never married to each other. The applicant's father was born in the United States on March 1, 1900. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship at birth through his father under former section 301(a)(7) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1407(a)(7)(1971).

The field office director denied the citizenship application noting, in relevant part, that the applicant had failed to submit his father's birth certificate and therefore failed to establish his father's U.S. citizenship. On appeal, the applicant, through counsel, submits his father's birth certificate indicating that he was born in Texas in 1900.

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). The applicant in the present matter was born in 1971. Former section 301(a)(7) of the Act therefore applies to the present case.

Former section 301(a)(7) of the Act stated, in pertinent 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 ten years, at least five of which were after attaining the age of fourteen years: Provided, That any periods of honorable service in the Armed Forces of the United States by such citizen parent may be included in computing the physical presence requirements of this paragraph.

Section 101(c) of the Act, 8 U.S.C. § 1101(c) states, in pertinent part, that for Title III naturalization and citizenship purposes:

The term "child" means an unmarried person under twenty-one years of age and includes a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in the United States or elsewhere . . . if such legitimation . . . takes place before the child reaches the age of 16 years . . . and the child is in the legal custody of the legitimating . . . parent or parents at the time of such legitimation.

Because the applicant was born out of wedlock, the applicant must meet the additional requirements set forth in former section 309 of the Act.¹ Former section 309(a) of the Act requires the applicant to establish that he was legitimated prior to the age of 21.

According to a April 2011 report from the Library of Congress (LOC 2010-04768, "LOC Report"), Article 331 of the Civil Code of the State of Chihuahua provides that a child born out of wedlock may be legitimated by the subsequent marriage of the natural parents. Filiation of an out of wedlock child may be accomplished by voluntary acknowledgment of the child or a final judgment declaring the paternity of the child. *See* LOC Report (*citing* Article 337, Civil Code of the State of Chihuahua). Acknowledgment may be achieved by any of the following ways: 1) on the birth record, before the Civil Registry Officer; 2) by a special acknowledgment proceeding before the Civil Registry Officer; 3) by a public notarial instrument; 4) under a will; or 5) by direct and open admission in open court. *Id.* (*citing* Article 347, Civil Code of the State of Chihuahua). The applicant's birth record lists the applicant's father's name and, although his paternity or filiation is therefore established, he was not legitimated in accordance with Article 331 of the Civil Code of the State of Chihuahua. The applicant therefore did not fulfill the legitimation requirement in former section 309(a) of the Act.

Additionally, the applicant has not established that his father was physically present in the United States for 10 years prior to 1971, five of which were after the age of 14 (after 1914), as required under former section 301(a)(7) of the Act. The record contains the applicant's father's social security earnings statement indicating that he was employed in the United States since 1951. There is no other evidence in the record of the applicant's father's physical presence in the United States. The social security earnings statements alone do not establish that the applicant's father was physically present in the United States for ten years prior to 1971. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (*citing Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). The applicant therefore could not demonstrate that, even if he had established legitimation, he acquired U.S. citizenship at birth under former section 301 of the Act, or any other provision of law.

“There must be strict compliance with all the congressionally imposed prerequisites to the acquisition of citizenship.” *Fedorenko v United States*, 449 U.S. 490, 506 (1981). The burden of proof in citizenship cases is on the claimant to establish the claimed citizenship by a preponderance of the evidence. *See* Section 341 of the Act, 8 U.S.C. § 1452; 8 CFR § 341.2. The applicant has failed to meet his burden of proof, and his appeal will be dismissed.

ORDER: The appeal is dismissed.

¹ Amendments made to the Act in 1986 included a new section 309(a) applicable to persons who had not attained 18 years of age as of the November 14, 1986 date of the enactment of the Immigration and Nationality Act Amendments of 1986, Pub. L. No. 99-653, 100 Stat. 3655 (INAA). Former section 309(a) also applies to any individual with respect to whom paternity had been established by legitimation prior to November 14, 1986. *See* section 13 of the INAA, *supra*. *See* also section 8(r) of the Immigration Technical Corrections Act of 1988, Pub. L. No. 100-525, 102 Stat. 2609.