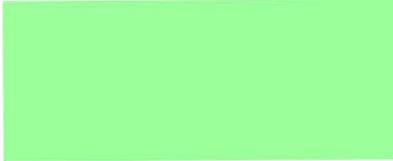


(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



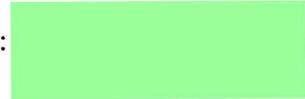
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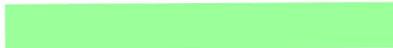
HARLINGEN, TX

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:

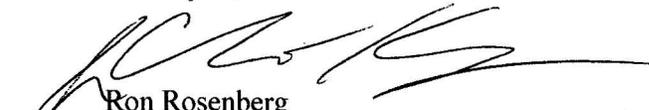


INSTRUCTIONS:

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 for Certificate of Citizenship (Form N-600) was denied by the Harlingen, Texas Field Office Director (the director) and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the application will remain denied.

Pertinent Facts and Procedural History

The applicant was born out of wedlock in the State of Tamaulipas, Mexico on February 10, 1970. The applicant's father is a U.S. citizen born in Oklahoma on December 9, 1903 or 1904. The applicant's mother acquired U.S. citizenship at birth in 1939 from the applicant's grandmother. The applicant's parents have never been married to each other. The applicant entered the United States on December 7, 1981 as a lawful permanent resident, and his lawful permanent residency was terminated on June 14, 1999 based upon a final administrative removal order. The applicant seeks a certificate of citizenship pursuant to sections 301 and 309 of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1401 and 1409, based on the claim that he acquired U.S. citizenship at birth through either his father or mother.

The applicant filed his Form N-600 on April 5, 2011. The director determined that the applicant was ineligible for a certificate of citizenship because: (1) he had not been legitimated by his father and his father had not agreed in writing to provide financial support before he reached the age of eighteen; and (2) his mother was not physically present in the United States for at least one year prior to the applicant's birth as required by section 309(c) of the Act. The director denied the application accordingly. On appeal, counsel contends, in part, that the applicant was legitimated prior to his twenty-first birthday, and that the applicant's mother's former employer attested to the applicant's mother's one-year of physical presence in the United States from 1968 until 1969.

Applicable Law

The AAO conducts appellate review on a de novo basis. *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. INS*, 247 F.3d 1026, 1028 n.3 (9th Cir. 2001). The applicant in this case was born in 1970.

Because the applicant was born abroad, he is presumed to be an alien and bears the burden of establishing his claim to U.S. citizenship by a preponderance of credible evidence. *See Matter of Baires-Larios*, 24 I&N Dec. 467, 468 (BIA 2008). The "preponderance of the evidence" standard requires that the record demonstrate that the applicant's claim is "probably true," based on the specific facts of each case. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (citing *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989)).

Acquisition of U.S. Citizenship Through U.S. Citizen Father

Former section 301(a)(7) of the Act¹ stated 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 . . . 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 . . . 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.

Additionally, because the applicant was born out of wedlock, he must satisfy the legitimation provisions set forth in section 309(a) of the Act. Section 309(a) was amended by the 1986 Act and applies to persons, such as the applicant, who had not yet attained eighteen years of age on November 14, 1986, the date of enactment. However, because the applicant was between the ages of fifteen and eighteen on November 14, 1986, he may elect to have the legitimation provisions in the former version of section 309(a) apply to him. *See* Section 8(r) of the Immigration Technical Corrections Act of 1988, Pub. L. No. 100-525, 102 Stat. 2609 (1988). The pre-amendment version of section 309(a) of the Act required that paternity be established by legitimation before a child turned twenty-one. *See* former section 309(a) of the Act. Current section 309(a) states, in pertinent part:

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.

¹ Former section 301(a)(7) of the Act was re-designated as section 301(g) by the Act of October 10, 1978, Pub. L. No. 95-432, 92 Stat. 1046 (1978). The requirements of former section 301(a)(7) remained the same after the re-designation and until 1986. Current section 301(g) of the Act is inapplicable here because it applies only to individuals born on or after November 14, 1986, the date of enactment of the Immigration and Nationality Act Amendments of 1986, Pub. L. No. 99-653, 100 Stat. 3655 (1986). (1986 Act). *See* Section 8(r) of the Immigration Technical Corrections Act of 1988, Pub. L. No. 100-525, 102 Stat. 2609 (1988).

(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.

Regarding former section 309(a) of the Act and his legitimation, the applicant was residing in Mexico from his birth in 1970 until he entered the United States as a lawful permanent resident in 1981. As noted by the director in his denial decision, the marriage of the parents was an absolute requirement for legitimation in the Mexican State of Tamaulipas under its 1961 Civil Code.

On February 1, 1987, however, the State of Tamaulipas, Mexico amended its Civil Code, eliminating the distinction between legitimate and illegitimate children. Although this change in the Civil Code occurred when the applicant was under the age of twenty-one, he may not benefit from it because he was residing in the United States as a lawful permanent resident. According to section 101(c)(1) of the Act, legitimation must take place under the laws of the applicant or his father's residence or domicile, which in this case was the State of Texas. *Matter of Moraga*, 23 I&N Dec 195, 199 (BIA 2001) (en banc) (citing *Matter of Hernandez*, 19 I&N Dec. 14, 17 (BIA 1983)).

Here, the applicant has not provided a court decree or any other evidence that his father took any action to legitimate him pursuant to the Texas Family Code. *See* Section 13.01 and 13.21 of the Texas Family Code (1975) (providing requirements for statement of paternity). While in *Matter of A-E-*, 4 I&N Dec. 405, 407-08 (BIA 1951), the Board of Immigration Appeals held that a common-law marriage with recognition of paternity can establish legitimation under Texas law, the applicant's parents could not perfect a common-law relationship because the applicant's father was already married to another individual and the applicant's parents never resided together in the State of Texas.

On appeal, counsel contends that as recently as 2010, the AAO has found that the registration of a child's birth in the Mexican State of Tamaulipas is sufficient evidence of legitimation, and cites two unpublished AAO decisions to support her contentions. These two unpublished decisions are not binding on the AAO or U.S. Citizenship and Immigration Services (USCIS) officers in their administration of the Act, as they have not been designated as precedents. 8 C.F.R. § 103.3(c). In addition, the facts in each case are distinguishable from the facts in this matter. In the 2008 AAO decision, the child was residing in Mexico and the change in the 1987 Civil Code applied retroactively. In the 2010 decision, the child was born in 2006 and the parents married in 2007.

Accordingly, the applicant has not established that his paternity was established by legitimation under Texas law, and he does not meet the requirements of former section 309(a) of the Act.

The applicant also does not meet the requirements of current section 309(a) of the Act. The applicant's father's signature on the applicant's birth certificate is his acknowledgement of the applicant's paternity; however, the record lacks sufficient evidence that the applicant's father had agreed in writing to provide financial support for him until his eighteenth birthday, as required by section 309(a)(3) of the Act.

The applicant's father passed away in 1990 when the applicant was twenty years old. The applicant submits one photograph of him, his father, and his father's wife, and claims that his father's wife accepted him as part of the family and that he spent time his father's family. While the applicant's claim may be true, there is no contemporaneous documentation in the record whereby the applicant's father agreed to financially provide for the applicant until his eighteenth birthday as is required by section 309(a)(3) of the Act.

On appeal, counsel claims that an applicant who is over the age of eighteen at the time he or she files a Form N-600 is not required to satisfy section 309(a)(3) of the Act because in enacting this statutory provision, Congress used the phrase "has agreed in writing" rather than "agreed in writing." Counsel does not provide any evidence to demonstrate that her interpretation of Congressional intent in drafting section 309(a)(3) of the Act is correct. The plain language of section 309(a)(3) is clear; a an applicant must establish that his biological father has agreed, in writing, to financially provide for an applicant prior to an applicant's eighteenth birthday regardless of the age of the applicant when the Form N-600 is submitted. Here, the photographs and the applicant's statements, by themselves, are insufficient to meet the applicant's burden of proof in this regard.

Based on the above discussion, the applicant cannot fulfill the requirements of section 309(a) of the Act and did not acquire U.S. citizenship at birth through his father.

Because the applicant has not demonstrated that he meets the requirements of either former or current section 309(a) of the Act, no purpose would be served in evaluating whether the applicant's father met the physical presence requirements set forth in former section 301(a)(7) of the Act. *See* former section 309(a) of the Act (stating that former section 301(a)(7) of the Act only applied to children born out of wedlock if they met the legitimation requirements).

Acquisition of U.S. Citizenship Through U.S. Citizen Mother

The applicant also did not acquire U.S. citizenship through his mother under section 309(c) of the Act, which states, in pertinent part:

[A] person born, after December 23, 1952, outside the United States and out of wedlock shall be held to have acquired at birth the nationality status of his mother, if the mother had the nationality of the United States at the time of such person's birth, and if the mother had previously been physically present in the United States or one of its outlying possessions for a continuous period of one year.

As evidence of his mother's continuous physical presence, the applicant submitted an affidavit from the applicant's mother's prior employer, A-S-². A-S- states that the applicant's mother lived in her home from April 1968 until April 1969, performing such work as cleaning, cooking and child care.

The affidavit of A-S- is very brief and provides no probative details of the mother's alleged residence in the United States with the family of A-S-. Apart from this one affidavit, the applicant submits no other testimonial or documentary evidence demonstrating his mother's physical presence in the United States prior to his birth. On appeal, counsel asserts that the director made "no effort . . . to speak with the affiant who made herself available." Counsel does not acknowledge that the burden of proof in these proceedings rests with the applicant, not the director. Consequently, this one affidavit is insufficient to meet his burden of proving, by a preponderance of the evidence, that he acquired U.S. citizenship through his mother.

Conclusion

The applicant bears the burden of proof to establish the claimed citizenship by a preponderance of the evidence. Section 341 of the Act, 8 U.S.C. § 1452; 8 C.F.R. § 341.2(c). Here, the applicant has not met this burden and is ineligible for citizenship under either sections 301 or 309 of the Act.

ORDER: The appeal is dismissed. The application remains denied.

² Name withheld to protect identity