



U.S. Citizenship  
and Immigration  
Services

(b)(6)

Date: **MAY 16 2013**

Office: HARLINGEN, TX

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under former Section 301(a)(7) of the Immigration and Nationality Act; 8 U.S.C. § 1401(a)(7) (1960).

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 October 5, 1960 in Mexico. The applicant's parents, as indicated on her birth certificate, are [REDACTED]. The applicant's parents were never married to each other. The applicant's father was born in Texas in 1907. The applicant's mother is not a U.S. citizen. The applicant seeks a certificate of citizenship claiming that she acquired U.S. citizenship at birth through her father.

The Field Office Director concluded that the applicant was not legitimated and therefore did not acquire U.S. citizenship at birth through her father. See Decision of the Field Office Director, dated December 6, 2011.

On appeal, the applicant, through counsel, contends that she was acknowledged by her father and legitimated pursuant to the Mexican Civil Code. Thus, the applicant maintains that she acquired U.S. citizenship at birth through her father. See Statement accompanying Form I-290B, Notice of Appeal or Motion.

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 (9<sup>th</sup> Cir. 2001) (internal citation omitted). The applicant in the present matter was born in 1960. Former section 301(a)(7) of the Act, 8 U.S.C. § 1401(a)(7), is therefore applicable to her 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.

The record reflects that the applicant was born out of wedlock. Former section 301(a)(7) of the act, *supra*, is applicable to children born out of wedlock only upon proof of legitimation prior to

the age of 21. *See* Former section 309(a) of the Act, 8 U.S.C. § 1409(a), as in effect prior to 1986.<sup>1</sup>

The applicant has submitted a birth certificate issued by the [REDACTED], Mexico that establishes she was born in Mexico in 1960 to [REDACTED]. 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 [REDACTED] 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).<sup>2</sup> 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 [REDACTED] Mexico can be established only upon the subsequent marriage of the applicant's parents. The applicant's parents were not married to each other and, therefore, the applicant was not legitimated and did not acquire U.S. citizenship at birth under sections 301 and 309 of the Act, or any other provision of law.

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.

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<sup>1</sup>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). The amendments further provided, however, that former section 309(a) applied 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.

<sup>2</sup>The Library of Congress explains that the Civil Code of 1940, which was superseded by the 1961 Code, did not include a legitimation or acknowledgment provision, or any provision expressly referring to registration of children born out of wedlock. *Id.* at 2-3.