(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

Date: MAY 2 3 2013 Office: HARLINGEN, TX FILE:

IN RE: Applicant:

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)(1962).

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 July 10, 1962 in Mexico. The applicant's parents are The applicant's parents were never married to each other. The applicant's birth certificate lists only his mother, but his father executed a document in 1980 purporting to recognize the applicant as his child. The applicant's father was born in Texas on March 12, 1928. The applicant's mother is not a U.S. citizen. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship at birth through his father.

The Field Office Director concluded that the applicant was not legitimated under either Mexican or Texas law, and therefore did not acquire U.S. citizenship at birth through his father. *See* Decision of the Field Office Director, dated December 6, 2012.

On appeal, the applicant, through counsel, contends that he was recognized by his father and therefore legitimated pursuant to Article 360 of Chapter IV of the Mexican Civil Code. *See* Appeal Brief at 5-6. Thus, the applicant maintains that he acquired U.S. citizenship at birth through his father. *Id.*

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 1962. Former section 301(a)(7) of the Act, 8 U.S.C. § 1401(a)(7), is therefore applicable to his 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. His parents were married to other people, and never married to each other. 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.[1]

The applicant has submitted a birth certificate issued by the State of Tamaulipas, Mexico that establishes he was born in 1960 to [redacted] The applicant has also submitted a document entitled "Acta de Reconocimiento" executed in 1980 by his father purporting to recognize him as his child under Mexican law.

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).[2] 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. The applicant's parents were not married to each other; therefore the applicant was not legitimated under the applicable law in the State of Tamaulipas, Mexico.

The AAO additionally finds that the applicant failed to establish he was legitimated by his father in accordance with legitimation laws in Texas, prior to his twenty-first birthday.

Section 13.21 of the Texas Family Code, in existence prior to the applicant's 21st birthday, provided, in pertinent part:

> If a statement of paternity has been executed by the father of an illegitimate child, the father . . . may file a petition for a decree designating the father as a parent of the child. The statement of paternity must be attached to the petition.

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[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). 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.

[2] 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.

(a) The court shall enter a decree designating the child as the legitimate child of its father and the father as a parent of the child if the court finds that:

1) the parent-child relationship between the child and its original mother has not been terminated by a decree of a court;
2) the statement of paternity was executed as provided in this chapter, and the facts stated therein are true; and
3) the mother or the managing conservator, if any, has consented to the decree.

The record in the present case 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, prior to his 21st birthday. The applicant therefore was also not legitimated under the laws of the State of Texas.

The applicant states that his sisters obtained derivative citizenship through their father, and maintains that his claim should be granted on that basis. *See* Appeal Brief. The record contains a copy of the applicant's sisters' U.S. passports. The applicant's sisters' passports, however, do not indicate how they acquired U.S. citizenship. In any event, the applicant's claim must be determined based solely on the information and evidence in the record before the AAO, and not on evidence relating to his siblings.

Having found that the applicant was not legitimated prior to the age of 21, it is unnecessary to determine the question of the applicant's father's physical presence in the United States. The applicant cannot establish that he was legitimated and therefore, he did not acquire U.S. citizenship at birth under former 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 his burden of proof. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.