

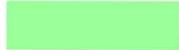


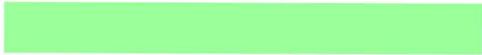
U.S. Citizenship
and Immigration
Services

(b)(6)

Date: **OCT 15 2013**

Office: SAN DIEGO, CA

FILE: 

IN RE: Applicant: 

APPLICATION: Application for Certificate of Citizenship under former Section 301 of the Immigration and Nationality Act; 8 U.S.C. § 1401 (1974).

ON BEHALF OF APPLICANT:

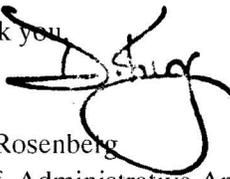
INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision.

Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.

Thank you



Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director (the director), San Diego, California, 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 November 16, 1974 in Mexico. The applicant's father, [REDACTED] was born on October 17, 1954 in [REDACTED] California. The applicant's mother, [REDACTED] 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 under former section 301(a)(7) of the Immigration and Nationality Act (the Act), 8 U.S.C. §1401(a)(7)(1974).¹

The director denied the applicant's Application for Certificate of Citizenship (Form N-600) for lack of prosecution. See Decision of the Field Office Director dated February 19, 2013. On appeal, the applicant, through counsel, maintains that he submitted sufficient evidence of his father's physical presence in the United States for ten years prior to his birth as is required by section 301(a)(7) of the Act. See Statement of the Applicant on Form I-290B, Notice of Appeal or Motion; see also Appeal Brief. The applicant states that his father's sworn statement sufficiently establishes that he was present in the United States as required. *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 1974. 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

In order to acquire U.S. citizenship at birth under former section 301(a)(7) of the Act, the applicant must therefore establish that his father was physically present in the United States for 10 years prior to 1974, five of which were after his fourteenth birthday (after 1968).

¹ Former section 301(a)(7) of the Act was re-designated as section 301(g) upon enactment of the Act of October 10, 1978, Pub. L. 95-432, 92 Stat. 1046. The substantive requirements of this provision remained the same until the enactment of the Act of November 14, 1986, Pub. L. 99-653, 100 Stat. 3655.

The applicant indicates that his parents were not married.² See Application for Certificate of Citizenship (Form N-600). The applicant therefore was born out of wedlock and is required to fulfill the additional requirements of section 309(a) of the Act.³

Section 309(a) of the Act, as amended on November 14, 1986 and intended to apply to persons who had not attained 18 years of age as of that date. See Immigration and Nationality Act Amendments of 1986, Pub. L. No. 99-653, 100 Stat. 3655 (INAA). Former section 309(a) of the Act, which only required that the child establish legitimation prior to the age of 21, applied to any individual who was over the age of 18 as of November 14, 1986 and 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. Although the applicant was under the age of 18 when the INAA was enacted, his paternity was established by legitimation prior to his 21st birthday in accordance with the laws of Baja California, Mexico. See Library of Congress Advisory Opinion (LOC 2004-416) (explaining that paternity can be established by voluntary acknowledgment of the child, which in turn is achieved, inter alia, on the birth record, before a Civil Registry Officer).

The question remains whether the applicant has established that his father was physically present in the United States as required by former section 301(a)(7) of the Act. In this regard, the record contains, in relevant part, the applicant's father's birth certificate, the applicant's birth certificate, a sworn statement by the applicant's father, and school, incarceration and social security records. The applicant maintains that his father's statement in conjunction with the documentary evidence submitted establishes his eligibility for citizenship. Counsel, citing *Vera-Villegas v. INS*, 330

² There are documents in the record (i.e., applicant's birth certificate) indicating that the applicant's parents were married at the time of his birth. Nevertheless, the applicant has consistently indicated that his parents were not married to each other at the time of his birth.

³ 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.

F.3d 1222 (9th Cir. 2003), maintains that the applicant's father's statement is sufficient to establish eligibility despite the lack of corroborating evidence. *See* Appeal Brief at 10.

The AAO finds no discrepancies in the applicant's father's statement, but the documentary evidence only corroborates his father's presence in the United States at birth, during high school between 1969 and 1970, and between 1970 and 1974. The applicant's father states also that he was in the United States until the age of 3 and a half, and since the age of 7. Counsel indicates that his efforts to obtain corroborating documentary evidence such as school records were unsuccessful. There is no explanation, however, why other records or testimony could not be obtained. *Cf. Vera-Villegas, supra*, at 1234 (holding that "[w]hen a substantial number of individuals are willing to step forward and swear under oath that an undocumented immigrant has lived in their community for a particular period of time, the collective weight of their declarations cannot be dismissed without a reasoned and persuasive explanation"). Unlike in the *Vera-Villegas* case, the applicant in this case cannot meet his burden of proving physical presence on the basis on his father's own statement alone, without corroborating documentation or additional witnesses. *See Lopez Alvarado v. Ashcroft*, 381 F.3d 847, 854 (9th Cir. 2004) (finding that the applicants substantiated their physical presence in the United States through testimony by multiple employers, and letters from landlords, friends, family, and church members). The applicant has not established, by a preponderance of the evidence, that his father was physically present in the United States for ten years prior to 1974, five of which were after 1968 (his 14th birthday). He therefore did not acquire U.S. citizenship at birth through his father under former section 301 of the Act or any other provision of law.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.