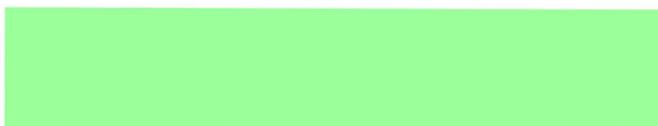


(b)(6)

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

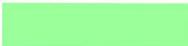


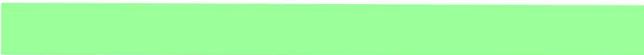
U.S. Citizenship
and Immigration
Services



DATE: OCT 25 2013

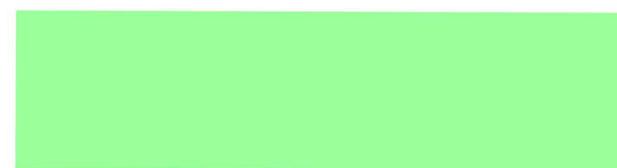
OFFICE: HELENA, MT

FILE: 

IN RE: 

APPLICATION: Application for Certificate of Citizenship under former Section 301 of the Immigration and Nationality Act; 8 U.S.C. § 1401, and section 309 of the Immigration and Nationality Act, as amended, 8 U.S.C. §1409

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Helena, Montana (the director), and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant was born in Mexico on April 21, 1985, to unmarried parents. The applicant's father, now deceased, was born in the United States on July 11, 1961, and was a U.S. citizen at the time of the applicant's birth. The applicant's mother was born in Mexico and she is not a U.S. citizen. The applicant seeks a certificate of citizenship under sections 301(a)(7) and 309(a) of the former Immigration and Nationality Act (the former Act), 8 U.S.C. §§ 1401 and 1409, and section 309(a) of the Immigration and Nationality Act, as amended (the Act), 8 U.S.C. §1409(a), based on the claim that he acquired U.S. citizenship through his father.

In a decision dated November 2, 2012, the director determined that the applicant failed to establish that his father satisfied the U.S. physical presence requirements set forth in section 301 of the former Act. The application was denied accordingly.

On September 9, 2013, the AAO mailed a Notice of Intent to Deny (NOID) to the applicant and counsel based on a determination that, although not addressed in the director decision, the record lacked evidence establishing that the applicant's father had legitimated the applicant, as set forth in section 309(a) of the former Act, or section 309(a) of the Act, as amended. The applicant was afforded 30 days to respond in writing to the issues raised in the NOID, and to meet his burden of proof.

Through counsel, the applicant asserts in response to the NOID, and on appeal, that he was legitimated by his father pursuant to the law in Chihuahua, Mexico; and that evidence in the record establishes that his father met the U.S. physical presence requirements set forth in the former Act. In support of these assertions, counsel submits birth certificate, Social Security Administration, military service, and school transcript information for the applicant's father; affidavits from the applicant and his mother; letters from the applicant's father; internet address information for the applicant's father; and photographs. The record also contains Civil Code documentation from the State of Chihuahua, Mexico, written in Spanish. Because the documents do not contain English translations, certified as complete and accurate by a competent foreign language translator, they cannot be considered as evidence in the present matter. *See* 8 C.F.R. § 103.2(b)(3). The entire remaining record was reviewed and considered in rendering a decision on the appeal.

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." *Chau v. INS*, 247 F.3d 1026, 1029 (9th Cir., 2000) (citations omitted). The applicant was born in 1985. Section 301(a)(7) of the former Act therefore applies to his acquisition of citizenship claim.

Section 301(a)(7) of the former Act provided in pertinent part, that the following shall be 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[.]¹

Additionally, an applicant born out of wedlock must satisfy the provisions set forth in section 309(a) of the Act. Prior to November 14, 1986, section 309(a) of the former Act required that a father's paternity be established by legitimation while the child was under 21. 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). An applicant between the ages of 15 and 18 on November 14, 1986, may elect to have the legitimation provisions in the former version of section 309(a) apply to him or her. See section 8(r) of the Immigration Technical Corrections Act of 1988, Pub. L. No. 100-525, 102 Stat. 2609 (1988). Also, amendments provided 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* and section 8(r) of the Immigration Technical Corrections Act of 1988.

The record reflects that the applicant's place of residence prior to November 14, 1986 was in Chihuahua, Mexico. On appeal, counsel asserts the opinion that articles 331-336 of the Civil Code for the State of Chihuahua, Mexico, contain provisions allowing for the legitimation of a child born out of wedlock, whose parents subsequently marry; and that, alternatively, articles 337-346 of the Civil Code contain provisions allowing for the legitimation of a child born out of wedlock, whose parents do not marry. Counsel asserts that in the applicant's case, birth certificate evidence establishes that his father legitimated the applicant pursuant to the non-married parent provisions contained in articles 337 and 347 of the State of Chihuahua, Civil Code. Counsel provides no legal evidence to corroborate her interpretation of the State of Chihuahua Civil Code provisions.

We are not persuaded by counsel's assertions. An April 2011 advisory opinion from the Library of Congress (LOC 2010-004768), reflects that the State of Chihuahua Civil Code articles referred to by counsel do not set forth procedures for legitimation in Chihuahua, Mexico, but rather that these articles set forth separate and distinct procedures for acknowledging filiation or paternity in the State. *Id.* (discussing the Chihuahua State Civil Code, as amended on March 23, 1974, <http://www.congresochihuahua.gob.mx/gestorbiblioteca/gestorcodigos/archivosCodigos/13.pdf>.) In a section entitled, "Distinctions Between Children Born In and Out of Wedlock," the Library of Congress opinion refers to articles 337 and 346 of the State of Chihuahua Civil Code, stating that parentage is established with respect to the father by voluntary acknowledgment of the child or by a final judgment declaring the paternity of the child, and that 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)

¹ Section 301(a)(7) of the former 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 section 301(a)(7) of the former Act remained the same after the re-designation and until 1986.

under a will; or 5) by direct and open admission in open court. *Id.* The Library of Congress opinion contains a separate section entitled, “Legitimation of Children Born Out of Wedlock,” reflecting that the State of Chihuahua Civil Code differentiates between procedures for establishing paternity and filiation, and procedures for establishing legitimation for children born out of wedlock. Specifically, the Library of Congress opinion refers to legitimation procedures contained in articles 331-337 of the Civil Code, requiring that the parents of a child born out of wedlock acknowledge the child as theirs, and that they marry in order for the child to become legitimated. *Id.* In the present matter, the applicant’s parents did not marry. The applicant therefore failed to demonstrate that his father established paternity by legitimation in Chihuahua, Mexico, prior to November 14, 1986.

The applicant was also not legitimated by his father, prior to November 14, 1986, in the State of North Carolina, where his father was domiciled. Under Article 2, section 49-10 of the North Carolina General Statutes, the father of a child born out of wedlock may legitimate the child by filing a:

[v]erified written petition . . . in a special proceeding in the superior court of the county in which the putative father resides or in the superior court of the county in which the child resides, praying that such child be declared legitimate. The mother, if living, and the child shall be necessary parties to the proceeding[.]

Here, the record lacks evidence that the applicant’s father filed a petition to legitimate the applicant. The applicant was therefore not legitimated under North Carolina law prior to November 18, 1986. Accordingly, section 309(a) of the former Act does not apply to the applicant’s claim for citizenship.

Section 309(a) of the Act, as amended in 1986, applies to persons such as the applicant who had not yet attained eighteen years of age or been legitimated on November 14, 1986, and states in pertinent part that:

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.

The applicant has failed to establish that he meets the requirements set forth in section 309(a) of the Act. In a request for additional evidence (RFE), the AAO provided the applicant with an opportunity to supplement the record. The record contains no evidence of a written agreement from the applicant's father to support the applicant financially until the age of 18, as required under section 309(a)(3) of the Act. In addition, the applicant failed to meet the requirements set forth in section 309(a)(4) of the Act, as the applicant was not legitimated in Chihuahua, Mexico or in North Carolina prior to his 18th birthday; and the record lacks evidence establishing the applicant's father acknowledged paternity over the applicant in writing under oath, or that paternity was established by adjudication of a competent court prior to the applicant's 18th birthday.

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

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 failed to meet his burden of establishing eligibility for a certificate of citizenship under section 309(a) of the former or amended Acts. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.