



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: SEP 13 2013 Office: EL PASO, TX

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under Sections 301 and 309(a) 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 (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 appeal was denied by the Field Office Director, El Paso, Texas, 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 in Mexico on September 3, 1985. The applicant's parents were married on October 6, 1997. The applicant's father, [REDACTED] was born in El Paso, Texas on December 17, 1964. The applicant's mother is not a U.S. citizen. The applicant's father passed away in 2010. The applicant seeks a certificate of citizenship claiming that she acquired U.S. citizenship at birth through her father.

The field office director denied the applicant's citizenship claim upon finding that she had failed to establish that her father agreed in writing to provide for her financial support as is required by section 309(a) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1409(a), as amended.

On appeal, the applicant, through counsel, maintains that the requirement of section 309(a)(3) of the Act is inapplicable in her case because her father is deceased. *See Letter Brief in Support of Appeal.* Thus, the applicant claims, citing the Foreign Affairs Manual (FAM), that she need not show that her father agreed in writing to provide for her financial support. *Id.* (citing 7 FAM § 1133.4-2(b)(3)(a) and (d)).

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 1985. Former section 301(g) of the Act, 8 U.S.C. § 1401, as in effect in 1985, is therefore applicable to her case.¹

Former section 301(g) of the Act provides, in relevant 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

The record reflects that the applicant was born prior to her parents' wedding. She was therefore born out of wedlock. Section 301(g) of the act, *supra*, is applicable to children born out of wedlock only upon fulfillment of the conditions specified in section 309(a) of the Act.

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

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.

The record contains the results of a DNA test establishing the blood relationship between the applicant and her father. The applicant's birth record and her parents' subsequent marriage establish that she was legitimated by her father under the laws of Texas and Chihuahua, Mexico. The applicant's father's Texas birth certificate establishes his U.S. citizenship. Lastly, the record contains the applicant's father's baptismal certificate, school records, affidavits, receipts, siblings' birth and baptismal certificates, and other documentation evidencing his physical presence in the United States. At issue in this case is whether the applicant's father agreed in writing to provide financial support for the applicant until her eighteenth birthday.

The applicant, through counsel, maintains that the language of section 309(a)(3) of the Act, specifically the parenthetical "unless deceased," necessarily means that the applicant need not submit her father's written agreement to provide for her financial support because of her father's death in 2010. The applicant was over the age of 18 in 2010. Counsel does not offer any support for his interpretation of this subsection, nor does the AAO find it persuasive. Section 309(a)(3) of the Act states that the applicant must demonstrate that her "father (unless deceased) has agreed in writing to provide financial support for [her] until [she] reaches the age of 18 years." The plain reading of section 309(a)(3) of the Act requires that the applicant submit evidence that her father, prior to her eighteenth birthday, agreed in writing to financially provide for the applicant. An applicant is exempt from this requirement if his or her father was deceased, prior to her eighteenth birthday. In such a case, in lieu of providing a written agreement of financial support, the applicant may submit a death certificate. *See* 7 FAM 1133.4-2. In this case, however, the applicant's father was alive while the applicant was under the age of 18, and able to execute a written agreement of financial support, the applicant is required to submit an executed written

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agreement of support. In 7 FAM § 1133.4-2(b)(3)(a) (stating that " unless dead, the father must be located and comply with the requirements of section 309(a), as amended, before the child's 18th birthday").

The record in this case does not contain any evidence of the applicant's father's written agreement to financially support her prior to her eighteenth birthday. The applicant therefore cannot fulfill the requirements of section 309(a)(3) of the Act, and did not acquire U.S. citizenship at birth through her father.

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.