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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

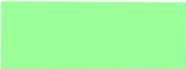


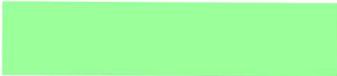
U.S. Citizenship
and Immigration
Services



Date: FEB 06 2014

Office: EL PASO, TX

FILE: 

IN RE: Applicant: 

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:

SELF-REPRESENTED

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 Director of the El Paso, Texas Field Office (the director) denied the Application for Certificate of Citizenship (Form N-600) and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

Pertinent Facts and Procedural History

The applicant was born in Mexico on January [REDACTED] 1973. The applicant's parents were never married to each other. The applicant claims that his father is [REDACTED], also known as [REDACTED] born in New Mexico on July [REDACTED] 1943. 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 applicant filed his first Form N-600 in 2002. The director determined that the applicant failed to demonstrate that he was legitimated as required by former section 309(a) of the Act, 8 U.S.C. § 1409(a), and denied the application accordingly. The AAO dismissed a subsequent appeal, finding that the applicant did not establish that he was legitimated by his father or that his father has agreed, in writing, to provide financial support to him. The applicant filed a second Form N-600 in 2007 and a third Form N-600 in 2012 that is the subject of this appeal. In all decisions the director denied the applicant's citizenship claim because the failed to establish the statutory requirements at section 309(a) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1409(a), as amended.¹

On appeal, the applicant maintains that former section 309(a) of the Act, as in effect prior to 1986, is applicable to his case. He further states that he has established that he was legitimated by his father and therefore acquired U.S. citizenship at birth through him.

Applicable Law

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 1973. Former section 301(a)(7) of the Act, 8 U.S.C. § 1401(a)(7), as in effect in 1973, is therefore applicable to his case.²

¹ When the applicant filed his second Form N-600, the director should have rejected the application and instructed the applicant to submit a motion to reopen or reconsider pursuant to 8 C.F.R. § 341.6. When the applicant filed his third N-600, the director treated the filing of the instant application as a motion to reopen for the sake of administrative efficiency.

² 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.

Former section 301(a)(7) of the Act provided, 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

Because the applicant was born out of wedlock, section 301(a)(7) of the act, *supra*, is applicable to his case only upon fulfillment of the conditions specified in section 309(a) of the Act.

Prior to November 14, 1986, former section 309 of the 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).³ Former section 309(a) of the Act, however, remained applicable 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.

The applicant was born in 1973 in [REDACTED] Mexico. According to a March 2004 advisory opinion from the Library of Congress (LOC 2004-416), parentage is governed in the state of [REDACTED] by the Civil Code ("Code") of the state, promulgated on July 31, 1942 as amended on June 6, 1989. The Code is retroactive, unless its application violates vested rights. Parentage is established with respect to the father by voluntary acknowledgment of the child or

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.

by a final judgment declaring the paternity of the child. 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) under a will; or 5) by direct and open admission in open court. The applicant's father's name is not listed on the applicant's birth certificate. In 2010, a court in the State of New Mexico entered a default order establishing the applicant's father's paternity *nunc pro tunc*. The applicant maintains that this 2010 order establishes that his paternity was established by legitimation prior to the age of 21. The applicant was 37 years old at the time.

The applicant has not established that his paternity was established by legitimation prior to 1986, or prior to the age of 21, or at any time. The applicant was under the age of 18 in 1986 and not legitimated when the new section 309(a) of the Act went into effect. Therefore, current section 309(a) of the Act is applicable to his case.

Section 309(a) of the Act, as amended, requires that the applicant establish that his father has agreed in writing to provide for his financial support. The applicant's father's affidavit is dated in 2012; it does not establish that he agreed in writing to provide financial support prior to the applicant's 18th birthday in 1991. The fact that he may have provided financial support as early as 1980, as is attested by the applicant's relatives, does not establish the written agreement to provide for financial support required by section 309(a) of the Act.

Lastly, section 309(a) of the Act also requires that the applicant demonstrate that he was legitimated, acknowledged, or that his paternity was established prior to the age of 18. The applicant was not legitimated under the laws of [REDACTED] Mexico, his place of birth. According to a April 2011 advisory opinion from the Library of Congress (LOC 2010-004768), the Civil Code of the State of [REDACTED] as amended, provides 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. 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) under a will; or 5) by direct and open admission in open court. The applicant's father's name does not appear in his birth certificate. The record does not contain any evidence of acknowledgment by the applicant's father in accordance with the [REDACTED] Civil Code.

In his affidavit, the applicant's father claims to have lived in Houston, Texas when the applicant's mother told him of the applicant's existence. There is no evidence, however, that the applicant was legitimated under Texas law. The Texas Family Code provides that a Texas court may issue a decree of legitimation upon a father's compliance with paternity decree provisions set forth in § 13.23 of the Texas Family Code, as well as legal legitimation provisions set forth in § 13.2.1 of the Texas Family code. The record does not contain a Texas court-ordered decree of paternity or legitimation. The AAO thus finds that the applicant was not legitimated pursuant to the laws in Texas.

Regarding the laws of New Mexico, the place where the applicant's father claims to have lived his entire life, notwithstanding his residence in Texas, the record contains a 2010 default order entered by the [REDACTED] in the State of New Mexico establishing the applicant's father's paternity *nunc pro tunc* to the applicant's date of birth. The default order submitted, which was entered after the applicant reached the age of 18, does not serve to fulfill the requirements of section 309(a)(4) of the Act. The default order relates to paternity and not legitimation, and thus does not meet the requirement of section 309(a)(4)(A) of the Act. The applicant's father did not participate in the proceedings and the order was entered as a default, thus the order does not constitute an acknowledgement of paternity in writing and under oath as required by section 309(a)(4)(B) of the Act. Finally, a *nunc pro tunc* order does not alter the facts as they existed for purposes of a citizenship determination. *See e.g., Fierro v. Reno*, 217 F.3d 1 (1st Cir. 2000) (holding that a state *nunc pro tunc* order, which retroactively changed custody from the petitioner's non-citizen mother to his citizen father, did not establish that he met all the criteria of former section 321 of the Act, 8 U.S.C. § 1432, because during the relevant time period he was actually in his mother's custody). Thus, the applicant's 2010 *nunc pro tunc* default order does not serve to establish his paternity while under the age of 18 as required by section 309(a)(4)(C) of the Act.

Conclusion

In sum, the applicant has not fulfilled the requirements of section 309(a) of the Act, as amended, or any other provision of law, and cannot establish that he derived U.S. citizenship from his father.

It is the applicant's burden to establish eligibility for the immigration benefit sought. *See* Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 341.2(c). Here, that burden has not been met.

ORDER: The appeal is dismissed.