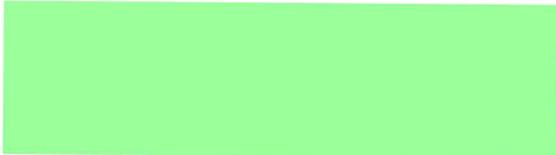


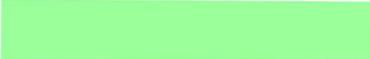


U.S. Citizenship
and Immigration
Services

(b)(6)



Date: FEB 27 2014 Office: SANTA ANA, CA



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 (1964).

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 Field Office Director, Santa Ana, California (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 record reflects that the applicant was born in the State of Guerrero, Mexico on [REDACTED]. The applicant's parents were not married to each other at the time. The applicant's father, [REDACTED], was born in California on October 15, 1919. 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 denied the applicant's citizenship claim upon finding that he had failed to establish eligibility for U.S. citizenship under 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 requirements of section 309(a) of the Act, as amended, are inapplicable in his case. *See* Letter Brief in Support of Appeal. The applicant states that he was legitimated prior to the age of 21, such that former section 309(a) of the Act applies to his case. *Id.* Moreover, he states that his father was physically present in the United States for the required period of time. *Id.*

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 1964. Former section 301(a)(7) of the Act, 8 U.S.C. § 1401(a)(7), as in effect in 1964, is therefore applicable to his case.¹

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

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.

The record reflects that the applicant was born out of wedlock. Former section 301(a)(7) 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.

Former section 309(a) of the Act, as in effect prior to the enactment of the Immigration and Nationality Act Amendments of 1986, Pub. L. No. 99-653, 100 Stat. 3655 (INAA), applies to any individual who had attained eighteen years of age as of November 14, 1986. Former section 309(a) of the Act also applies 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 Civil Code of the State of Guerrero provides that filiation of a child by a father can be established, *inter alia*, by voluntary acknowledgment in the child's birth certificate. *See* Library of Congress (LOC) Report No. 2010-004743; *see also* LOC Opinion No. 2004-416 (stating that "the provisions of the Civil Code currently in effect in Guerrero pertaining to the equality of all children are applicable also to those children who were born before the enactment of said Code").

Analysis

The record contains a copy of the applicant's birth certificate, issued in the State of Guerrero, Mexico. The birth certificate lists the applicant's father's name, [REDACTED]. The birth certificate, however, does not indicate who registered the applicant's birth or otherwise establish that the applicant's father voluntarily acknowledged the applicant. Thus, the applicant cannot establish that he was legitimated as required by former section 309(a) of the Act and he, therefore, did not acquire U.S. citizenship through his father under former section 301(a)(7) of the Act.

On appeal, counsel claims that the applicant was legitimated, basing his assertions on a legal opinion written by an attorney in Mexico, [REDACTED], refers to the American Convention on Human Rights and Article 60 of the Civil Code of the State of Guerrero as the authorities for establishing that the applicant was legitimated. However, according to LOC Reports No. [REDACTED], Article 521 is the applicable provision for filiation determinations in the State of Guerrero under its Civil Code. Accordingly, Ms. Torres' legal opinion holds little evidentiary weight.

Conclusion

In application proceedings, 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. Here, that burden has not been met.

ORDER: The appeal is dismissed.