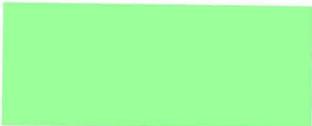




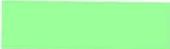
U.S. Citizenship  
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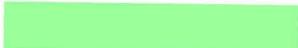


Date: **JUL 08 2014**

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:



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 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 out of wedlock in Mexico on October 25, 1982. The applicant's birth certificate lists only his mother, [REDACTED]. The applicant claims that [REDACTED] a U.S. citizen, is his father. The applicant's mother is not a U.S. citizen. The applicant's parents were married in 2011. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship at birth through his father.

The director denied the applicant's citizenship claim, finding that he had 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. See Decision of the Field Office Director, dated November 12, 2013. Specifically, the director noted that the applicant did not demonstrate that his father had legitimated or acknowledged him, or agreed in writing to provide for his financial support. *Id.*

On appeal, the applicant, through counsel, maintains that his father agreed in writing to provide for his financial support. See Counsel's Letter in Support of Appeal. In support of his appeal, the applicant submits: (1) an affidavit from a notary public attesting to the applicant's father's efforts to legitimate him; (2) two letters dated 1982 and 1989, respectively, from the applicant's father reflecting his intent to provide the applicant with financial support; and (3) the applicant's father's 1989 income tax return listing the applicant as a dependent.

*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 (9<sup>th</sup> Cir. 2001) (internal citation omitted). The applicant in the present matter was born in 1982. Former section 301(g) of the Act, 8 U.S.C. § 1401(g), as in effect in 1982, is therefore applicable to his case.<sup>1</sup>

Former section 301(g) of the Act provided, in relevant part, that the following shall be nationals and citizens of the United States at birth:

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<sup>1</sup> 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.

[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, former section 301(g) of the Act 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).<sup>2</sup> 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.<sup>3</sup>

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<sup>2</sup> 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.

<sup>3</sup> Because the applicant cannot established that his paternity was established by legitimated prior to 1986, or at any time, and he was under the age of 18 in 1986 when the new section 309(a) of the Act went into effect, 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 until his eighteenth birthday. The applicant's father's letters to his parents, the applicant's grandparents, indicate his intention to financially support the applicant but do not establish his agreement to support him until the age of 18. The evidence in the record does not demonstrate the applicant's father's written agreement to provide for financial support required by section 309(a)(3) of the Act.

Additionally, section 309(a) of the Act requires that the applicant demonstrate that he was legitimated, acknowledged, or that his paternity was established prior to the age of 18. As noted above, the applicant was not legitimated under the laws of [REDACTED] Mexico, his place of birth. According to an 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.<sup>4</sup> 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 contains evidence that the applicant's father may have intended to declare his paternity before a notary public, but the proceedings did not result in "a public notarial instrument" as required by the law of [REDACTED]. Thus, the applicant cannot establish that he was legitimated under the laws of [REDACTED].

The record indicates that the applicant's father was also domiciled in Texas, but there is no evidence 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.

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.

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<sup>4</sup> The subsequent marriage of a child's parents also results in legitimation under the Civil Code of [REDACTED] where there was an express acknowledgement of the child before or during the marriage. See LOC 2010-004768 (citing Articles 331 and 332 of the Civil Code of [REDACTED]). The Code applicant's parents, however, were not married prior to his 21<sup>st</sup> birthday such that he could be deemed legitimate under former section 309(a) of the Act, nor is there evidence in the record to establish express acknowledgement of the applicant as required by the law in [REDACTED].

*Conclusion*

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.