

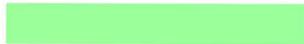


U.S. Citizenship
and Immigration
Services

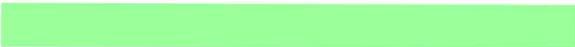
(b)(6)



Date: **MAR 18 2014** Office: HARLINGEN, TX



IN RE: Applicant:



APPLICATION: Application for Certificate of Citizenship under former Section 301 of the Immigration and Nationality Act of 1952, 8 U.S.C. § 1401 (1982)

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.

Thank you,

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

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Harlingen, Texas Field Office Director (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 The director's decision will be withdrawn and this matter will be remanded to the director for entry of a new decision.

Pertinent Facts and Procedural History

The applicant was born out of wedlock on August 6, 1982 in the state of [REDACTED] Mexico to [REDACTED]. The record indicates that the applicant's father, having been born in Texas, is a U.S. citizen by birth. The applicant's mother was born in Mexico and the record contains no evidence that she is a U.S. citizen. The applicant states that he entered the United States without permission in 1996 when he was approximately fourteen years old.¹ The applicant seeks a certificate of citizenship pursuant to former section 301 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401 (1982), on the basis that he acquired U.S. citizenship at birth through his U.S. citizen father.

The director denied the application, determining that the applicant was ineligible for a certificate of citizenship under former section 301 of the Act because he had not first demonstrated that he met the additional requirements for children born out of wedlock under section 309(a) of the Act. The applicant through counsel submits a brief on appeal, contending that the director's conclusions were not supported by the law or the evidence of record.

Applicable Law

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Because the applicant was born abroad, he is presumed to be an alien and bears the burden of establishing his claim to U.S. citizenship by a preponderance of credible evidence. *See Matter of Baires-Larios*, 24 I&N Dec. 467, 468 (BIA 2008).

The applicable law for transmitting citizenship to a child born abroad to a U.S. citizen is the statute that was in effect at the time of the child's birth. *See Chau v. INS*, 247 F.3d 1026, 1028 n.3 (9th Cir. 2001). The record indicates that the applicant in this case was born out of wedlock in 1982 to one U.S. citizen and one noncitizen parent. Accordingly, former section 301(g) of the Act is the applicable law in this matter.²

Former section 301(g) of the Act stated, in pertinent 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 . . . of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth

¹ The applicant's Form N-600 indicates that the applicant departed the United States briefly in June 2006 and returned the same month. No information as to the manner of his re-entry was set forth.

² Former section 301(a)(7) of the Act was re-designated as section 301(g) by the Act of October 10, 1978, Pub. L. No. 95-432, 92 Stat. 1046 (1978) (1978 Act). The requirements of the statute remained the same after the 1978 re-designation and until 1986.

of such person, was physically present in the United States . . . for a period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years. . . .

However, for a child born out of wedlock, U.S. Citizenship and Immigration Services (USCIS) does not reach the question of whether an applicant's parent had the required years of physical presence in the United States unless the applicant can establish that he or she was legitimated under the relevant section of law.

Former section 309(a) of the Act³, which applies to children born out of wedlock, was amended in 1986 by Immigration and Nationality Act Amendments of 1986, Pub. L. No. 99-653, 100 Stat. 3655 (1986) (1986 Act). The amended provision applies to persons born on November 14, 1986, the effective date of the Act, or those who had not yet attained eighteen years of age on that date, unless they had already been legitimated under the former version of section 309(a) of the Act. *See* Section 8(r) of the Immigration Technical Corrections Act of 1988, Pub. L. No. 100-525, 102 Stat. 2609 (1988).

Here, the applicant was less than eighteen years of age on the 1986 enactment date and, therefore, unless he can establish that he had already been legitimated under former section 309(a) of the Act, current section 309(a) of the Act is applicable to his citizenship claim.

Analysis

The record shows that the applicant's father acknowledged paternity of the applicant when he registered the applicant's birth on March 23, 1984 with the Civil Registry in [REDACTED]. The U.S. Court of Appeals for the Fifth Circuit (Fifth Circuit), within whose jurisdiction this matter falls, has held that such a formal acknowledgement of paternity under the Civil Code of [REDACTED] between 1961 and 1987 was sufficient to establish the applicant's paternity by legitimation under the laws of [REDACTED]. *Iracheta v. Holder*, 730 F.3d 419, 425 (5th Cir. 2013). Accordingly, the record establishes that the applicant satisfied former section 309(a) of the Act, having been legitimated at the age of 17 months. The AAO therefore withdraws that portion of the direction's decision, which had concluded that the applicant had not established that his paternity was established by legitimation.

As the applicant has demonstrated that he satisfies the requirements of former section 309(a) of the Act, his citizenship claim under former section 301(g) of the Act may now be considered. However, the current record before the AAO is insufficient to establish that the applicant's father met the physical presence requirements of former section 301(g) of the Act. Aside from the applicant's

³ Former section 309(a) of the Act stated, in pertinent part:

The provisions of paragraphs (3), (4), (5), and (7) of section 301(a) . . . shall apply as of the date of birth to a child born out of wedlock on or after the effective date of this Act, if the paternity of such child is established while such child is under the age of twenty-one years by legitimation.

father's social security statement indicating that he had been physically present in the United States from 1968 until the applicant's birth in 1982, substantial evidence in the record, including the birth certificates of his other children born in Mexico and court records showing that the applicant's father could not be located at his U.S. address or place of employment for a number of years, places the applicant's father outside the United States for a significant portion of the relevant period. The applicant's parents' statements also do not address the applicant's father's physical presence in the United States, and the record otherwise lacks independent objective evidence of the applicant's father's physical presence, such as employment records, lease agreements, financial or medical records, and utility bills.

Accordingly, the record fails to establish that the applicant's father was physically present in the United States for a period or periods totaling ten years, five of which were after attaining fourteen years of age, as required under former section 301(g) of the Act. However, as the director did not reach the substantive requirements of former section 301(g) of the Act, the lack of evidence of the applicant's father's physical presence in the United States was never raised in either of the Requests for Evidence (RFE) issued in this matter. Accordingly, the matter will be remanded to the director for further consideration of the applicant's citizenship claim under former section 301(g) of the Act.

Conclusion

The applicant bears the burden of proof to establish the claimed citizenship by a preponderance of the evidence. 8 C.F.R. § 341.2(c). Here, the applicant has met his burden of establishing that he satisfied the requirements of former section 309(a) of the Act; however, he has not established his eligibility for U.S. citizenship under former section 301(g) of the Act.

ORDER: The director's decision, dated April 17, 2013, is withdrawn and the matter remanded to the director for entry of a new decision, which if adverse to the applicant, shall be certified to the AAO for review.