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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



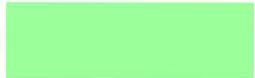
U.S. Citizenship
and Immigration
Services



Date:

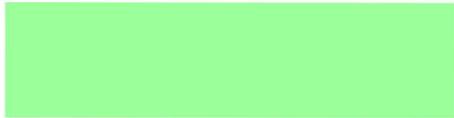
Office: SAN ANTONIO, TX

FILE:



IN RE: **MAY 20 2014**

Applicant:



APPLICATION:

Application for Certificate of Citizenship under Former Sections 301(a)(7) and 309(a) as well as Current Section 309(a) of the Immigration and Nationality Act; 8 U.S.C. § 1401(a)(7) and 1409(a)

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, San Antonio, Texas (the director) denied the Application for Certificate of Citizenship (Form N-600), and the matter came before the Administrative Appeals Office (AAO) on appeal. The AAO dismissed the appeal, and the applicant has filed a motion to reopen and reconsider the AAO's decision. The motion to reconsider will be granted. The prior decision of the AAO will be affirmed and the appeal will remain dismissed.

Pertinent Facts and Procedural History

The applicant was born on July 6, 1971 in Tamaulipas, Mexico. The applicant's father, [REDACTED], was born in the United States on November 20, 1912. The applicant's mother, [REDACTED] became a U.S. citizen upon her naturalization in 2006, after the applicant's eighteenth birthday. The applicant's parents were never married to each other. The applicant seeks a certificate of citizenship claiming that she acquired U.S. citizenship at birth through her father.

The director concluded that the applicant was not legitimated under the laws of the State of Tamaulipas, Mexico. *See* Decision of the Field Office Director, dated June 20, 2012. On appeal, the applicant maintained that she was legitimated in accordance with the laws of the State of Tamaulipas. *See* Appeal Brief.

The AAO dismissed the appeal, finding that the applicant was not legitimated by her father because her birth was first registered by her mother and did not serve as an acknowledgement of paternity. *See* Decision of the AAO, dated July 24, 2013. The AAO noted that the applicant's second birth registration did not list her father's name and therefore also did not serve as an acknowledgment of paternity. *Id.*

The applicant, through counsel, seeks reconsideration of the AAO's decision claiming that the Civil Code of the State of Tamaulipas, as in effect on February 1, 1987, does not apply to her case because it is not retroactive where, as here, it has a detrimental effect on the child. *See* Statement of the Applicant on Form I-290B, Notice of Appeal or Motion.

Applicable Law

According to the regulation at 8 C.F.R. § 103.5(a)(2), a motion to reopen must state the new facts to be provided and be supported by documentary evidence. The regulations, at 8 C.F.R. § 103.5(a)(3), provide further that a "motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy."

The AAO notes that since the issuance of its decision on July 24, 2013, the Fifth Circuit Court of Appeals decided the case of *Iracheta v. Holder*, 730 F.3d 419, 425 (5th Cir. 2013). In *Iracheta*, the Fifth Circuit analyzed the legitimation requirements under the laws of the State of

Tamaulipas. Reconsideration of the applicant's case in light of *Iracheta* is warranted and the applicant's motion will therefore be granted.

Analysis

The Fifth Circuit explained in *Iracheta* that "acknowledged" children under the pre-1987 Civil Code of Tamaulipas were afforded "full filial rights, vis-à-vis the acknowledging parent, even before the distinction between legitimate and illegitimate children was abolished [in 1987]." *Id.* Thus, the court concluded that a child's paternity is established by legitimation under the Civil Code of Tamaulipas for purposes of derivative citizenship determinations where the child is formally acknowledged. *Id.* Both before and after 1987, acknowledgment of a child in accordance with the Civil Code of Tamaulipas can be accomplished in the birth certificate before the civil registry official. *Id.*

As previously noted, one of the applicant's birth certificates lists [REDACTED] as her father. The birth certificate does not indicate whether the applicant's birth was registered by her mother, her father, or both. As was also previously noted, there is a second birth certificate in the record that lists someone other than [REDACTED] as the applicant's father. Thus, the AAO cannot find that the applicant was acknowledged such that, whether under the pre or post 1987 Civil Code of Tamaulipas, she can be deemed to have been legitimated for purposes of acquisition of U.S. citizenship.

Moreover, whereas former section 309(a) of the Act, 8 U.S.C. § 1409(a), as in effect prior to 1986, required only that an out-of wedlock child establish that he or she was legitimated prior to the age of 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 enactment date and whose paternity had not been established by legitimation prior to such date. However, persons who were at least 15 years of age but under 18 years of age could elect to have former section 309(a) of the Act apply instead of the new, amended section 309(a) of the Act. Pub. L. No. 99-653, 100 Stat. 3655 (INAA); section 8(r) of the Immigration Technical Corrections Act of 1988, Pub. L. No. 100-525, 102 Stat. 2609 (1988).¹

¹Current 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-

Here, the applicant was 15 years old on November 14, 1986; however, she does not meet the requirements of either the former or the current section 309(a) of the Act. Her claim fails under former section 309(a) of the Act because, as discussed, she was not legitimated under the laws of the State of Tamaulipas, Mexico. Her claim fails under current section 309(a) of the Act because the applicant presented no evidence that her father agreed in writing to provide for her financial support until she reached the age of 18 as is required under current section 309(a)(3) of the Act, and counsel does not address this issue on motion, despite the AAO's discussion of this eligibility criterion in its prior decision.

Having determined that the applicant does not satisfy either former or current section 309(a) of the Act concerning legitimation of children born out of wedlock, the AAO does not reach the issue of whether the applicant's father had the physical presence in the United States prior to the applicant's birth required to transmit U.S. citizenship to her under former section 301(a)(7) of the Act.

Conclusion

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. The applicant has failed to establish that she was legitimated and therefore, she did not acquire U.S. citizenship at birth under former sections 301 and 309 of the Act or current section 309(a) of the Act.

ORDER: The motion is granted. The AAO's prior decision, dated July 24, 2013, is affirmed. The appeal remains dismissed.

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- (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.