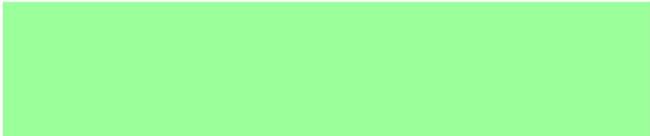




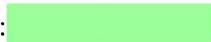
U.S. Citizenship
and Immigration
Services

(b)(6)

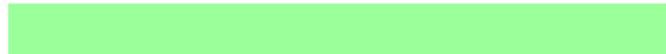


Date: SEP 23 2014

Office: HARLINGEN, TX

FILE: 

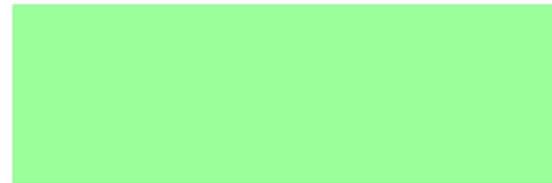
IN RE:

Applicant: 

APPLICATION:

Application for Certificate of Citizenship under Former Sections 301 and 309 of the Immigration and Nationality Act; 8 U.S.C. §§ 1401 and 1409

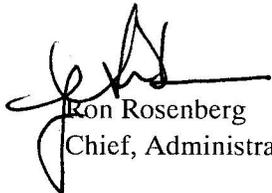
ON BEHALF OF APPLICANT:



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.

Thank you,



Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director of the Harlingen, 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 sustained and the matter returned to the director for issuance of a certificate of citizenship to the applicant.

Pertinent Facts and Procedural History

The applicant was born in Mexico on [REDACTED], 1982. Her father, now deceased, was born in Texas on [REDACTED] 1934, and was a U.S. citizen. Her mother is not a U.S. citizen. The applicant seeks a certificate of citizenship pursuant to former section 301(g) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(g), based on the claim that she acquired U.S. citizenship at birth through her U.S. citizen father.

In a decision dated September 26, 2013, the director determined that the applicant failed to establish that she was legitimated by her father as required under section 309 of the Act, as amended, 8 U.S.C. § 1409.¹ The application was denied accordingly. On appeal the applicant asserts, through counsel, that her father legitimated her at birth in Mexico, pursuant to requirements discussed in the U.S. Fifth Circuit Court of Appeals (Fifth Circuit) decision, *Iracheta v. Holder*, 30 F.3d 419 (5th Cir. 2013).

We conduct appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3rd Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

Applicable Law

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. INS*, 247 F.3d

¹ Section 309(a) of the Act, as amended, states in pertinent part:

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.

1026, 1028 n.3 (9th Cir. 2001). Here, the applicant was born in 1982. Former section 301(g) of the Act therefore controls her claim to U.S. citizenship.² Former section 301(g) of the Act provided in pertinent part that the following shall be 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 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.

Because the applicant was born out of wedlock, she must additionally satisfy the provisions set forth in section 309(a) of the Act. Prior to November 14, 1986, former section 309(a) of 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). Amendments provided further that former section 309(a) of the Act requirements applied 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*, and section 8(r) of the Immigration Technical Corrections Act of 1988, Pub. L. No. 100-525, 102 Stat. 2609 (1988).

The applicant was born abroad. She is therefore presumed to be an alien and bears the burden of establishing her claim to U.S. citizenship by a preponderance of credible evidence. See *Matter of Baires-Larios*, 24 I&N Dec. 467, 468 (BIA 2008). See also, 8 C.F.R. § 341.2(c). The “preponderance of the evidence” standard requires that the record demonstrate that an applicant’s claim is “probably true,” based on the specific facts of each case. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (citing *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm’r. 1989)).

Analysis

Former section 309 of the Act

The applicant has demonstrated that her father's paternity was established by legitimation prior to November 14, 1986, and before the applicant turned 21 years old, as required under former section 309 of the Act. Under the law in [REDACTED] Mexico, legitimation of a child occurs

² Section 301(a)(7) of the Immigration and Nationality Act of 1952 (the 1952 Act) was re-designated as section 301(g) by the Act of October 10, 1978, Pub. L. No. 95-432, 92 Stat. 1046 (1978). The requirements of former section 301(g) of the Act remained the same as those under section 301(a)(7) of the 1952 Act and until 1986. Current section 301(g) of the Act applies to individuals born on or after November 14, 1986, the date of enactment of the Immigration and Nationality Act Amendments of 1986, Pub. L. No. 99-653, 100 Stat. 3655 (1986). (1986 Act). See section 8(r) of the Immigration Technical Corrections Act of 1988, Pub. L. No. 100-525, 102 Stat. 2609 (1988).

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when a father acknowledges paternity by placing his name on the child's birth certificate before the Civil Registry. *See Iracheta v. Holder*, 30 F.3d at 426, *supra*. In the present matter, the applicant's birth certificate reflects that the applicant was born in [REDACTED] Mexico, on [REDACTED] 1982; her father placed his name on her birth certificate; and her birth was registered before the Civil Registry in [REDACTED] Mexico on [REDACTED] 1986, when she was four years old. The applicant therefore meets the legitimation requirements set forth in former section 309(a) of the Act.

Former section 301(g) of the Act

To establish that her father was physically present in the United States for 10 years prior to the applicant's birth on [REDACTED] 1982, at least five years of which were after her father turned 14 on [REDACTED] 1948, the applicant submits her father's U.S. birth certificate, reflecting that he was born in Texas on [REDACTED] 1934; an employment letter reflecting an agreement that the applicant's father would be available to employer [REDACTED] between January 2, 1973 and December 31, 1973; a U.S. citizenship identification card issued to the applicant's father in [REDACTED] Texas on June 7, 1976; and Social Security Administration earnings evidence reflecting that the applicant's father was employed in the United States during the following years: 1955 – 1958; 1960; 1963 – 1967; and 1970 – 1974.

The record also contains affidavits from family members. The applicant's mother states in an affidavit dated November 15, 2011, that she met the applicant's father in [REDACTED] Mexico in 1975; within three months they moved in together; and they had five children and lived together as a family in [REDACTED] Mexico until separating in January 1993. The applicant's aunt, [REDACTED], states in an affidavit dated May 6, 2011, that the applicant's father lived in Mexico when his children were born in [REDACTED]. The applicant's sister, [REDACTED] states in a May 6, 2011 affidavit, that the applicant's father lived with their family in Mexico for 15 years, until about 1994, when he moved back to [REDACTED] Texas.

Upon review, we find that the applicant has established by a preponderance of the evidence that her father was physically present in the United States for over 10 years between 1934 and 1974. The applicant thus established that her father was physically present in the United States for 10 years prior to the applicant's birth in [REDACTED]. She also established her father's physical presence in the United States for over five years after he turned 14 on [REDACTED] 1948. Accordingly, the applicant has met her burden of establishing that she acquired U.S. citizenship through her father under former section 301(g) of the Act. The appeal will therefore be sustained.

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 been met.

ORDER: The appeal is sustained. The matter is returned to the director for issuance of a certificate of citizenship to the applicant.