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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

[Redacted]

DATE: **AUG 06 2015**

[Redacted]

IN RE:

[Redacted]

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

ON BEHALF OF APPLICANT:

[Redacted]

INSTRUCTIONS:

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

f. Handwritten signature of Ron Rosenberg in black ink.

Ron Rosenberg
Chief, Administrative Appeals Office

The Field Office Director, El Paso, Texas, 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.

The applicant was born in Mexico on [REDACTED] to unmarried parents. The applicant claims that her father is U.S. citizen [REDACTED] born in Mexico on [REDACTED] and he is listed on the applicant's birth certificate along with her mother, [REDACTED] as the applicant's birth parents. The applicant's mother is not a U.S. citizen. [REDACTED] and [REDACTED] married in Mexico on [REDACTED]. The applicant seeks a certificate of citizenship claiming that she acquired U.S. citizenship at birth through her father.

The director found that the applicant failed to establish that her father ever agreed in writing to support her financially until she turned 18, as required by section 309(a)(3) of the Act, 8 U.S.C. § 1409(a)(3), and denied the application, accordingly. On appeal, the applicant identifies several documents bearing her father's signature and asserts they satisfy the statutory requirement of a written support agreement.

The AAO conducts appellate review on a de novo basis. *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. *Chau v. INS*, 247 F.3d 1026, 1028 n.3 (9th Cir. 2001). The applicant in this case was born in [REDACTED]. Accordingly, section 301(g) of the Act (as amended) controls her claim to citizenship.

Section 301(g) of the Act provides, 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 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 five years, at least two of which¹ were after attaining the age of fourteen years

Because the applicant was born out of wedlock, section 301(g) of the Act is applicable to her case only upon fulfillment of the conditions specified in section 309(a) of the Act.

Section 309(a) of the Act states:

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 Sec. 12, Act of Nov. 14, 1986, Pub. L. No. 99-653, 100 Stat. 3655, 3657, shortened the required period of United States residence for the citizen parent, from the previous ten/five years to the current five/two years. The shorter period only applies to persons born after Nov. 14, 1986.

- (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.

The record reflects that, in issuing him a Certificate of Citizenship on [REDACTED] USCIS determined [REDACTED] to have been a U.S. citizen since his birth in [REDACTED]. The applicant was born in [REDACTED] Mexico.

According to an April 2011 advisory opinion from the Library of Congress ([REDACTED]), 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. 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 is listed on the applicant's birth certificate. The applicant maintains that the birth certificate shows her paternity was established by legitimation prior to the age of 18, and the record indicates she was four months old at the time her birth was registered. Therefore, the second and fourth conditions under section 309(a) of the Act, regarding U.S. citizenship of and legitimation by the claimed father, have been satisfied.

The director determined that the applicant had not met the third condition, providing proof in writing that her father agreed to provide financial support until she was 18, and noted the applicant's father testified at her interview with USCIS that he had never drafted any kind of written statement promising to do so. On appeal, the applicant asserts that, in lieu of such a written statement, USCIS should accept tax returns on which the applicant's father listed her as a

dependent, a Texas marriage certificate,² and an alleged verbal agreement by her father to her mother to support the applicant until adulthood.

Section 309(a)(3) of the Act, as amended, requires that the applicant establish her father agreed in writing to provide financial support. Her father's 2014 affidavit does not establish that he agreed in writing to provide financial support prior to the applicant's 18th birthday in [REDACTED]. The fact that he may have actually provided financial support does not satisfy the statutory requirement of a written agreement, and there is no substantial compliance exception. *See, O'Donovan-Conlin v. DOS*, 255 F.Supp.2d 1075, 1084-85 (N.D. Cal. 2003) ("The applicant did not fully comply with [section 309(a)(3)], there is no recognized substantial compliance exception that plaintiffs can rely on, and the statute is clear on its face."). An applicant for a certificate of citizenship under section 309(a)(3) of the Act "must meet *all of its preconditions*. . . . [T]he statute plainly requires a U.S. citizen father to put in writing that he will support his illegitimate child until the age of 18." *Id.* at 1083 (citing *Nguyen v. INS*, 533 U.S. 53, 60 (2001)). Where the record contains an admission by the applicant's father that he never memorialized in writing that he would support the applicant, she is unable to fulfill this requirement.

It is the applicant's burden to establish the claimed citizenship by a preponderance of the evidence. Section 341(a) of the Act, 8 U.S.C. § 1452(a); 8 C.F.R. § 341.2(c). Here, that burden has not been met.

ORDER: The appeal is dismissed.

² We note that besides the [REDACTED] Mexican marriage certificate, the record also contains a [REDACTED] Texas marriage certificate for her parents. There is no evidence that the [REDACTED] marriage was invalid, and thus the second marriage has not been shown to have any legal effect.