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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: FEB 03 2015 Office: HARLINGEN, TX FILE: [redacted]

IN RE: Applicant: [redacted]

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:

[redacted]

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 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 dismissed.

Pertinent Facts and Procedural History

The applicant was born out of wedlock in Mexico on The applicant's mother, married in 1972. The applicant's original birth certificate, which was registered in 1972, lists as his father; however, the applicant claims that his natural father is The applicant obtained a new birth certificate in 2007 listing as his father. was born in Texas on and died in July 1975. The applicant seeks a certificate of citizenship claiming, that he acquired U.S. citizenship at birth through his natural father.

The director found that the applicant did not acquire U.S. citizenship at birth because he could not establish that he was legitimated by *See Director's Decision*, dated October 21, 2014. On appeal, the applicant maintains that he was retroactively legitimated on the basis of his new birth certificate, issued in 2007, which lists as his father. *See* Appeal Brief at 4-5.

Applicable Law

We review these proceedings *de novo*. 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 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 (9th Cir. 2001) (internal citation omitted). The applicant in the present matter was born in 1969. Former section 301(a)(7) of the Act, 8 U.S.C. § 1401(a)(7), is applicable to his case.

Former section 301(a)(7) 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 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: *Provided*, That any periods of honorable service in the Armed Forces of the United States by such citizen parent may be included in computing the physical presence requirements of this paragraph.

Former section 301(a)(7) of the act, *supra*, is applicable to children born out of wedlock only upon proof of legitimation prior to the age of 21. *See* Former section 309(a) of the Act, 8 U.S.C. § 1409(a), as in effect prior to 1986.

Analysis

Our *de novo* review of the record reveals no error in the director's decision to deny the instant application for a certificate of citizenship.

Under section 101(c)(1) of the Act, 8 U.S.C. § 1101(c)(1), the term *child* for naturalization and citizenship purposes includes a child who is legitimated under the laws of the child or father's residence or domicile. Here, the applicant was born in Tamaulipas, Mexico and continued to live there at the time of death in 1975 when the applicant was old.[1] The Fifth Circuit explained in *Iracheta v. Holder*, 730 F.3d 419, 425 (5th Cir. 2013) (*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.*[2]

The applicant on appeal states that under the doctrine of comity, U.S. Citizenship and Immigration Services (USCIS) must accept the 2007 birth certificate, which lists as his father, as evidence of the applicant's legitimation. This birth certificate, however, is insufficient to establish the applicant's legitimation under the Fifth Circuit's holding in *Iracheta* and we may not ignore this binding precedent in the interest of comity.

As noted above, the Fifth Circuit found that legitimation under the laws of Tamaulipas is accomplished when the natural father formally acknowledges his child. The birth certificate that the applicant relies upon to support his claim to being legitimated by was issued in 2007, 32 years after the applicant's father's death, and the "facts" supporting this certificate were reported by the applicant's mother. Neither in 1972 nor in 2007 did the applicant's father formally acknowledge the applicant's birth, as required under the laws of Tamaulipas, Mexico. The letter from dated August 1990, deeding land to and [his] sons" also does not amount to an acknowledgment of the applicant's birth before a civil registry under the Civil Code of Tamaulipas. Accordingly, the evidence does not support a determination that legitimated the applicant under the laws of Tamaulipas, Mexico such that he meets the requirements of former section 309(a) of the Act.

[1] The applicant does not state, and the record does not support a finding, that he was legitimated under the laws of Texas, the place of residence.

[2] *Iracheta* is binding precedent in this matter, as the applicant has provided a Texas residential address with his Form N-600 application.

Moreover, 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). The amendments further provided, however, that former section 309(a) 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. *See also* section 8(r) of the Immigration Technical Corrections Act of 1988, Pub. L. No. 100-525, 102 Stat. 2609.

Individuals, like the applicant, 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). Current 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.

The applicant's claim similarly fails under current section 309(a) of the Act because he has not establish: a blood relationship between him and [redacted] by clear and convincing evidence; that he was legitimated under the laws of Tamaulipas, Mexico or the State of Texas; that [redacted] acknowledged the applicant's paternity in writing under oath; or that [redacted] paternity was established by adjudication of a competent court.

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, we do not reach the issue of whether [redacted] had the physical presence in the United States prior to the applicant's birth required to transmit U.S. citizenship to him under former section 301(a)(7) of the Act.

Conclusion

It is the applicant's burden to establish eligibility for the immigration benefit sought. *See* Section 341 of the Act, 8 U.S.C. § 1452; 8 C.F.R. § 341.2(c). Here, that burden has not been met as to his eligibility for a certificate of citizenship.

ORDER: The appeal is dismissed. The application remains denied.