



U.S. Citizenship  
and Immigration  
Services

(b)(6)

Date: FEB 10 2015

Office: EL PASO, TX

FILE: [REDACTED]

IN RE:

Applicant: [REDACTED]

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.

Thank you,

Ron Rosenberg

Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, El Paso, 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 on October 5, 2010. The applicant now files a motion to reopen and reconsider the AAO's decision. The motion to reopen will be granted. The prior decisions of the AAO will be withdrawn. The appeal will be sustained.

*Pertinent Facts and Procedural History*

The applicant was born on [REDACTED] in Tamaulipas, Mexico. The applicant's father, [REDACTED] was born in the United States on [REDACTED]. The applicant's mother, [REDACTED], was born in Mexico and was not a U.S. citizen at the time of the applicant's birth. The applicant's parents were never married to each other. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship at birth through his father.

The director denied the application finding that the applicant was not legitimated as required by former section 309(a) of the Act, 8 U.S.C. § 1409(a). See Decision of the Field Office Director, dated June 13, 2009.<sup>1</sup> On appeal, noting a 1987 change in the law of the State of Tamaulipas, the applicant maintained that he was legitimated. We dismissed the appeal, finding that the amended Civil Code of the State of Tamaulipas was not applicable to the applicant. The applicant now seeks reopening and reconsideration in light of the Fifth Circuit Court of Appeals decision in *Iracheta v. Holder*, 730 F.3d 419, 425 (5<sup>th</sup> Cir. 2013). A reopening on these grounds is warranted.

*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. Immigration and Naturalization Service*, 247 F.3d 1026, 1028 n.3 (9<sup>th</sup> Cir. 2001) (internal citation omitted). The applicant in the present matter was born in [REDACTED]. Former section 301(a)(7) of the Act, 8 U.S.C. § 1401(a)(7), is therefore 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

<sup>1</sup> The applicant had previously filed an Application for Certificate of Citizenship in 2003. The director denied this application for failure to demonstrate legitimation. See Decision of the District Director, dated January 3, 2006. The AAO dismissed the applicant's appeal of the 2006 denial. See Decision of the AAO, dated November 27, 2007.

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.

The record reflects that the applicant was born out of wedlock. 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.<sup>2</sup>

*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 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.*

The applicant was born in [REDACTED]. According to a 2012 Library of Congress (LOC) report, prior to 1961, the 1940 Civil Code of Tamaulipas governed issues relating to domestic relations. *See* LOC Report 2012-008314. According to the LOC, "[n]o provision was found addressing how children born out of wedlock may be acknowledged by their father or legitimated" in the 1940 Civil Code.

The Board of Immigration Appeals (BIA) explained in *Matter of Moraga*, 23, I&M Dec. 195, 199 (BIA 2001)(en banc), that a change in a country's legitimation laws must take place prior to the child reaching the age required for legitimation in the relevant provision of the Act in order for the child to benefit under the changed laws. In this case, the 1961 Tamaulipas Civil Code came into effect when the applicant was three years old. The Act requires that the applicant establish his legitimation prior to the age of 21. *See* section 309(a) of the Act. Thus, the 1961 Tamaulipas Civil Code is the relevant law for purposes of the applicant's U.S. citizenship claim.

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<sup>2</sup>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.

The applicant was acknowledged by his father when his name was placed in his birth registration. "[A]cknowledgement' is substantively equivalent to 'legitimation'" when, as here, the "acknowledged child . . . acquired full filial rights with regard to the acknowledging parent." *Iracheta v. Holder*, 730 F.3d 419, 425 (5<sup>th</sup> Cir. 2013). The applicant has therefore established that he was legitimated as required by former section 309(a) of the Act.

The question remains whether the applicant's father was physically present in the United States for at least ten years between [REDACTED] and [REDACTED] five of which were after 1940. *See* Former section 301(a)(7) of the Act, 8 U.S.C. § 1401(a)(7)(1960). The record contains, in pertinent part, the applicant's father's birth certificate, his sworn affidavit and his military records. The record also contains a copy of the 1930 census, listing the applicant's paternal grandfather, and 1940 census, listing the applicant's father. The applicant's father's military records indicate that he served honorably in the U.S. army from March 1944 until April 1946. The record also contains evidence that the applicant's father served as a firefighter in [REDACTED] Texas continuously for 30 years, from 1949 to 1979. The record thus demonstrates that the applicant's father was physically present in the United States for ten years prior to [REDACTED] five of which were after 1940.

*Conclusion*

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 341(a) of the Act, 8 U.S.C. § 1452(a). Here, that burden has been met.

**ORDER:** The motion is granted. The AAO's prior decisions are withdrawn and the appeal is sustained. The matter is returned to the El Paso Field Office for issuance of a certificate of citizenship.