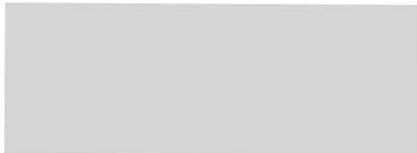




**U.S. Citizenship
and Immigration
Services**

(b)(6)



DATE: JUL 15 2015

FILE #: [REDACTED]

APPLICATION RECEIPT #: [REDACTED]

IN RE: Applicant: [REDACTED]

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

ON BEHALF OF APPLICANT:

NO REPRESENTATIVE OF RECORD

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

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Charleston, South Carolina, denied the application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant was born in Nicaragua on [REDACTED]. The applicant's parents were never married to each other. His father was born in Puerto Rico on [REDACTED]. The applicant's mother is not a U.S. citizen. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship at birth through his father.

The Field Office Director stated that the applicant was not legitimated by his U.S. citizen father under the laws of the applicant's residence before he turned 18 years of age. The Form N-600, Application for Certificate of Citizenship, was denied accordingly. See *Decision of the Field Office Director*, dated August 14, 2014.

On appeal, the applicant contends that under Article 75 of the 1987 Constitution of Nicaragua, all distinctions between legitimate and illegitimate children were removed, thus he qualifies for acquired U.S. citizenship as the legitimate child of his U.S. citizen father.

The AAO reviews these proceedings *de novo*. 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. 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 [REDACTED]. Former section 301(a)(7) of the Act, 8 U.S.C. § 1401(a)(7), as in effect in [REDACTED] is therefore applicable to his case.¹

Former section 301(a)(7) of the Act provided, in relevant 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

Because the applicant was born out of wedlock, section 301(a)(7) of the act, *supra*, is applicable to his case only upon fulfillment of the conditions specified in section 309(a) of the Act.

Prior to November 14, 1986, former section 309 of the Act required that a father's paternity be established by legitimation while the child was under 21. Amendments made to the Act in 1986

¹ The Act of October 10, 1978, Pub. L. 95-432, 92 Stat. 1046, re-designated former section 301(a)(7) of the Act as section 301(g). The substantive requirements of the provision, however, remained the same until the enactment of the Act of November 14, 1986, Pub. L. 99-653, 100 Stat. 3655.

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).² Former section 309(a) of the Act, however, remained applicable 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 born in [REDACTED] in Nicaragua. The record contains a copy of the applicant's birth certificate, which includes the name of his U.S. citizen father. However, prior to the 1987 Constitution of Nicaragua, marriage of the natural parents was the only method of legitimation for children born out of wedlock in Nicaragua. As the applicant's parents were never married, the applicant's paternity was not established by legitimation prior to 1986, or prior to the age of 21. The applicant was under the age of 18 in 1986 and not legitimated when the new section 309(a) of the Act went into effect. Therefore, current section 309(a) of the Act is applicable to his case.

Section 309(a)(1) of the Act, as amended, requires that a blood relationship between the person and the father is established by clear and convincing evidence. This is established through the father's acknowledgement that the applicant is his son on the applicant's birth certificate.

Section 309(a)(1) of the Act, that the father had the nationality of the United States at the time of the person's birth, is satisfied through the birth certificate of the applicant's father, showing that he was born in Puerto Rico.

Section 309(a)(3) of the Act requires that the applicant establish that his father has agreed in writing to provide for her financial support, unless the father is deceased. The record establishes that the applicant's father has been deceased since May 6, 2001.

Section 309(a)(4) of the Act requires that the applicant demonstrate that he was legitimated, acknowledged, or that his paternity was established prior to the age of 18.

² 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.

We note that, according to the Nicaraguan Constitution, Nicaragua eliminated any legal distinctions between children born in wedlock and out of wedlock. *See* Constitution of Nicaragua, Chapter IV, Article 75 (1987). The Nicaraguan Constitution came into effect on January 9, 1987, when the applicant was [REDACTED] years old. Thus, the applicant is considered legitimated pursuant to the laws of Nicaragua. *See Matter of Moraga*, 23 I&N Dec. 195, 199 (BIA 2001) (when a country where a beneficiary was born and resides eliminates all legal distinctions between children born in wedlock and children born out of wedlock, all natural children are deemed to be the legitimate or legitimated offspring of their natural father *from the time that country's laws are changed*) (emphasis added).

Strict compliance with statutory prerequisites is required to acquire citizenship. *See Fedorenko v. U.S.*, 449 U.S. 490, 506 (1981).

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 been met.

ORDER: The appeal is sustained.