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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

[REDACTED]

DATE: JUL 17 2015

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.

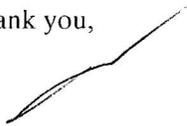
ON BEHALF OF APPLICANT:

[REDACTED]

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,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Dallas, Texas, denied the application. 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]. The applicant's parents were never married to each other. Her father was born in the United States on [REDACTED]. The applicant's mother is not a U.S. citizen. The applicant seeks a certificate of citizenship claiming that she acquired U.S. citizenship at birth through her father.

The Field Office Director determined that the applicant failed to properly respond to a Request for Evidence to establish that her father was physically present in the United States for the amount of time required under the statute, and that she was the legitimate child of her U.S. citizen father. The Form N-600, Application for Certificate of Citizenship, was denied accordingly. *See Decision of the Field Office Director*, dated April 10, 2014.

On appeal, in a letter dated May 27, 2014, the applicant's counsel stated that a brief and/or additional evidence would be submitted to the AAO within 30 calendar days. However, as we have not received a brief or any additional evidence, the record is considered complete.

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 1973, 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

Former section 301(a)(7) of the Act requires that the U.S. citizen parent was physically present in the United States or its outlying possessions for a period or periods totaling not less than ten years prior to the birth of the child, at least five of which were after attaining the age of fourteen years. Therefore, the applicant must establish that her father resided in the United States for ten years

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.

between his birth on [REDACTED], and her birth on [REDACTED], and that five of those years followed [REDACTED] the date on which the applicant's father turned 14 years of age.

The record includes a copy of the applicant's father's birth certificate, indicating that he was born in Mississippi. The record further includes a letter dated May 4, 2006 from the Texas State Board of [REDACTED] which states that the applicant's father was issued [REDACTED] on or about [REDACTED] and renewed that license on or about [REDACTED] and again in [REDACTED] and [REDACTED], and three more times after the year [REDACTED]. A report from the Social Security Administration indicates that the applicant's father had social security earnings reported for [REDACTED].

In addition, the record includes affidavits from two of the applicant's half-siblings, children of her father. Both affidavits state that the applicant's father lived in the United States for all his life, with the exception of a short period of time when he was incarcerated in Mexico and fathered the applicant.

The evidence establishes that the applicant's father met the requisite physical presence in the United States as prescribed under former section 301(a)(7) of the Act.

Because the applicant was born out of wedlock, section 301(a)(7) of the act, *supra*, is applicable to her 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 or court proceedings 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).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.

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.

The applicant has not established that her paternity was established by legitimation prior to 1986, or prior to the age of 21, or at any time. 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 her case.

Section 309(a)(3) of the Act, as amended, requires that the applicant establish that her father has agreed in writing to provide for her financial support, unless the father is deceased. The record establishes that the applicant's father is deceased as of [REDACTED]

Section 309(a)(4) of the Act requires that the applicant demonstrate that she was legitimated, acknowledged, or that her paternity was established prior to the age of 18. The applicant was not legitimated under the laws of [REDACTED] Mexico, her place of birth. According to an April 2011 advisory opinion from the Library of Congress (LOC 2010-004768), 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 does not appear on her birth certificate. Further, the record does not contain any evidence of acknowledgment by the applicant's father in accordance with the [REDACTED] Civil Code.

The record indicates that the applicant's father lived in Texas. There is further no evidence, however, the applicant was legitimated under Texas law. The Texas Family Code provides that a Texas court may issue a decree of legitimation upon a father's compliance with paternity decree provisions set forth in § 13.23 of the Texas Family Code, as well as legal legitimation provisions set forth in § 13.2.1 of the Texas Family code. The record does not contain a Texas court-issued decree of paternity or legitimation. We thus find that the applicant was not legitimated pursuant to the laws in Texas.

Accordingly, the record is insufficient to determine that the applicant was legitimated by her father while under 18, in accordance with section 309(a)(4)(A) of the Act. Further, there is no indication that the applicant's father acknowledged his paternity in writing, under oath, or by adjudication of a competent court, in accordance with sections 309(a)(4)(B), (C) of the Act. As the applicant has not satisfied the conditions of a child born out of wedlock, under section 309(a), she is unable to establish her citizenship under former section 301(a)(9) of the Act.

As noted by the U.S. Supreme Court: "There must be strict compliance with all the congressionally imposed prerequisites to the acquisition of citizenship." *Fedorenko v United States*, 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 not been met.

ORDER: The appeal is dismissed.