

(b)(6)



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

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF E-I-P-

DATE: NOV. 25, 2015

APPEAL OF HARLINGEN, TEXAS FIELD OFFICE DECISION

APPLICATION: FORM N-600, APPLICATION FOR CERTIFICATE OF CITIZENSHIP

The Applicant, a native and citizen of Mexico, seeks a Certificate of Citizenship. *See* Immigration and Nationality Act (the Act) § 309(a), 8 U.S.C. § 1409(a). The Field Office Director, Harlingen, Texas, denied the application in 1994, and dismissed a motion to reopen the matter. The matter is now before us on appeal. The appeal will be dismissed.

The Applicant was born in Mexico on [REDACTED] 1976. The record indicates that the Applicant's parents were never married to each other. The Applicant claims that his father was born in the United States on [REDACTED] 1946. The Applicant's mother is not a U.S. citizen. The Applicant seeks a certificate of citizenship indicating that he acquired U.S. citizenship at birth through his father.

The Applicant filed a Form N-600, Application for Certificate of Citizenship, on May 8, 1992. The District Director of the Harlingen Office of the former Immigration and Naturalization Service denied the application on October 4, 1994. There is no evidence in the record that the Applicant filed an appeal of this decision.

On October 2, 2013, the Applicant filed a motion to reopen the October 4, 1994, decision. On November 23, 2013, the Director advised the Applicant that the evidence provided was insufficient to establish that his father was born in the United States, and requested the Applicant to provide additional evidence. In a December 6, 2013, response, the Applicant provided information on the places and dates of birth for his siblings, as well as his father's baptismal, delayed birth, and ancestry records as documentation of his father's physical presence. The Applicant also indicated that he was trying to obtain birth certificates of the siblings of his father. On March 26, 2014, the Director determined that the Applicant's case should not be reopened, and therefore dismissed the motion to reopen and affirmed the denial of the Form N-600.

On appeal, the Applicant contends that he did provide sufficient additional evidence to prove that his father was a U.S. citizen by a preponderance of the evidence, and therefore he acquired U.S. citizenship at birth through his father. The Applicant submits copies of birth certificates for four of his father's siblings, and contends that these birth certificates support the assertion that even though his father has a birth certificate registered in Mexico in 1946, his father was actually born in the United States.

We conduct appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

Because the Applicant was born abroad, he is presumed to be a foreign national 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 “preponderance of the evidence” standard requires that the record demonstrate that the Applicant’s claim is “probably true,” based on the specific facts of each case. See *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (citing *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm’r. 1989)).

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 1976. Therefore, if the Applicant can establish that his father was a U.S. citizen, former section 301(a)(7) of the Act, 8 U.S.C. § 1401(a)(7), as in effect in 1976, would be applicable to this 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, the acquired citizenship provisions set forth in section 309 of the Act also apply to this case. Section 309(a) of the Act, 8 U.S.C. § 1409(a), provides, in pertinent part:

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.

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.

(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.

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 years of age. 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). However, former section 309(a) of the Act 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.

Evidence of record indicates that current section 309(a) of the Act applies to the Applicant, as he was not legitimated when the new section 309(a) of the Act went into effect. The Applicant was born in 1976 in Mexico to unwed parents. The record contains a copy of the Applicant's birth certificate, which includes the name of his father. According to an August 2012 Library of Congress (LOC) report, LOC Report 2012-008314, the Civil Code of Tamaulipas ("Code"), which went into effect prospectively on October 24, 1961, indicates that a child born out of wedlock could be legitimated only by the subsequent marriage of the child's parents, provided that the child was also acknowledged by them. While parentage of a child born out of wedlock is established with regard to the father by his acknowledgement of the child, e.g., when registering its birth, a child born out of wedlock could only be legitimated by the subsequent marriage of the child's parents. The LOC report states that Tamaulipas amended its civil code to eliminate the distinction between legitimate and illegitimate children on February 1, 1987. However, because the change in law occurred after November 14, 1986, the Applicant's paternity was not established by legitimation prior to November 14, 1986. *See Matter of Moraga*, 23 I&N Dec 195, 199 (BIA 2001) (en banc); and *Matter of Hernandez*, 19 I&N Dec. 14, 17 (BIA 1983). Accordingly, while the Applicant's paternity was established by legitimation under Mexican law before he turned 21, it was not established prior to November 14, 1986, and therefore the Applicant is subject to current section 309(a) of the Act as set forth above.

(b)(6)

Matter of E-I-P-

The record establishes that the Applicant has satisfied three of the four conditions to acquire U.S. citizenship under section 309(a) of the Act.

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 requirement was fulfilled through the father's acknowledgement that the Applicant is his son on the Applicant's birth certificate.

Section 309(a)(3) of the Act requires that the Applicant show that his father has agreed in writing to provide for his financial support, unless the father is deceased. The record indicates that the Applicant's father has been deceased since [REDACTED]

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. The Applicant has shown that, before his 18th birthday, his father acknowledged him as his son on the Applicant's birth certificate, and that he was legitimated under the amendment to the Civil Code of the State of Tamaulipas, Mexico on February 1, 1987.

The issue in this matter is whether the Applicant satisfied section 309(a)(2) of the Act, which requires that the father had the nationality of the United States at the time of the person's birth.

The record includes a copy of the birth certificate of the Applicant's father which indicates that the Applicant's father was born on [REDACTED] 1946, in [REDACTED], in the Municipality of [REDACTED] Tamaulipas, Mexico. This birth certificate was registered on [REDACTED] 1946, approximately [REDACTED] after the birth occurred. Furthermore, the U.S. Consulate General in [REDACTED] Nuevo Leon, Mexico authenticated the registration of this birth certificate. Thus, this birth certificate provides *prima facie* evidence that the Applicant's father was born in Mexico.

The record also includes a delayed birth certificate for the Applicant's father, which indicates that the Applicant's father was born on [REDACTED] 1946, in [REDACTED], Texas, and which was registered on May 11, 1967, when the Applicant's father was 21 years of age.

The Board of Immigration Appeals (the Board) has found that the same evidentiary weight does not attach to a delayed birth certificate as would attach to one contemporaneous with the actual event. *See Matter of Lugo-Guadiana*, 12 I&N Dec. 726, 729 (BIA 1968). A delayed certificate must be evaluated in light of other evidence in the record and in light of the circumstances of the case. *See Matter of Bueno-Almonte*, 21 I&N Dec. 1029, 1033 (BIA 1997). A delayed birth certificate, even where unrebutted by contradictory evidence, will not in every case establish an applicant's status as United States citizen. When United States citizenship is sought to be established through a delayed birth certificate each case must be decided on its own facts with regard to the sufficiency of the evidence presented as to an applicant's birthplace. *See Matter of Serna*, 16 I&N Dec. 643 (BIA 1978).

(b)(6)

Matter of E-I-P-

The Board noted that it was reluctant to accord delayed birth certificates the same weight it would give birth certificates issued at the time of birth due to the potential for fraud. *See, e.g., Matter of Ma*, 20 I&N Dec. 394 (BIA 1991). In *Matter of Serna*, 16 I&N Dec. 643 (BIA 1978), a case involving the establishment of United States citizenship through the presentation of a delayed United States birth certificate, the Board explained this approach. The Board acknowledged that a delayed birth certificate might be the only type of birth certificate available to some applicants and noted that it would be unjust to penalize these persons; however, the Board recognized that “there can be little dispute that the opportunity for fraud is much greater with a delayed birth certificate.” *Matter of Serna, supra*, at 645. Given these competing concerns, the Board ruled that a delayed birth certificate, even when un rebutted by contradictory evidence, will not in every case establish the petitioner's status as a United States citizen. Each case must be decided on its own facts with regard to the sufficiency of the evidence presented. *Id.*

While the record includes a copy of the baptismal certificate of the Applicant's father indicating that he was born in the United States and that he was baptized in the United States on [REDACTED] when he was approximately [REDACTED] this document does not provide sufficient evidence to overcome his officially registered birth certificate which indicates that he was born in Mexico.

On appeal, the Applicant contends that his father had several siblings, some of whom were born in Texas and some of whom were born in Mexico. He asserts that it was common for Mexican nationals with children born in the United States to register their births in Mexico, particularly if they were intending to raise the child in Mexico. He further claims that his father and one brother of his father were actually born in Texas, but the father of his father registered birth certificates for these two in Mexico. This claim is not supported by the record, as the documentation submitted indicates that some of the father's siblings were born in Texas, but there is no evidence that they also had birth certificates registered in Mexico which indicate that they were born in Mexico. There is no evidence of record that the father of the Applicant's father followed the practice of registering births in Mexico for children born in the United States in any consistent manner.

The Applicant contends that his father had five siblings, two older siblings born in [REDACTED] Texas, an older sibling born in Mexico, and two younger siblings born in Mexico. The Applicant submits copies of four birth certificates for his father's siblings, two birth certificates for two siblings born in Texas, and two birth certificates for two siblings born in Mexico, and contends that these birth certificates support his assertion that even though his father has a birth certificate registered in Mexico in 1946, that his father was actually born in the United States.

The four birth certificates of the siblings of the Applicant's father in the record include: a birth certificate registered in 1971 in Texas for an older female sibling of the Applicant's father, indicating that she was born in 1936 in Texas; a birth certificate registered in 1957 for the an older female sibling of the Applicant's father, [REDACTED] indicating that she born on [REDACTED] 1942 in Texas; a birth certificate registered on [REDACTED] 1949, in Mexico for an older male sibling of the Applicant's father, [REDACTED] indicating that he was born on [REDACTED] 1943, in Mexico; and a birth certificate also registered on [REDACTED] 1949, in Mexico for the Applicant's father's younger male sibling.

(b)(6)

Matter of E-I-P-

The Applicant contends that one of his father's older brothers was actually born in Texas in 1943, and that at the time it was common for Mexican nationals with children born in the United States to register their births in Mexico, particularly if they intended to raise the child in Mexico. The Applicant asserts that consequently, the parents of the Applicant's father registered a birth certificate for his older brother in 1949 to indicate that he was born in Mexico. However, we note that the parents of the Applicant's father registered the birth certificate in Mexico approximately five months after he was born in 1946, a relatively contemporaneous registration of the birth. Similarly, when the younger brother of the Applicant's father was born in 1949, the birth certificate was registered contemporaneously six months after the birth. The Applicant's claim, that the registration of the birth certificate of the father's older brother when he was five years of age to indicate that he was born in Mexico when he was actually born in Texas, does not constitute evidence, nor is there other documentation in the file to support this claim. Furthermore, this claim does not provide a sufficient explanation for why the parents of the Applicant's father did not register the birth of the elder brother on [REDACTED] 1946, when registering the father's birth certificate, instead waiting another three years until [REDACTED] 1949, to register the birth of the elder brother along with the birth of the younger brother.

The evidence in the record with respect to the siblings of the Applicant's father does not establish a consistent pattern of registering the births of children born in the United States as being born in Mexico, and there is no evidence to support the Applicant's contention that the birth certificates of the siblings of his father establish that his father, with a contemporaneous birth certificate indicating that he was born in Mexico, was actually born in the United States.

Based upon the deference that must be given to the contemporaneously registered birth certificate indicating that the Applicant's father was born in Mexico, and for other reasons as explained above, the Applicant did not establish, by a preponderance of the evidence, that his father was a U.S. citizen. Therefore, the Applicant does not meet the requirements under section 309(a) of the Act in order to acquire U.S. citizenship through his father.

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 not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of E-I-P-*, ID# 12960 (AAO Nov. 25, 2015)