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

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

MATTER OF C-M-

DATE: OCT. 22, 2015

MOTION OF ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Applicant, a native and citizen of Mexico, seeks to receive a certificate of citizenship. *See* Immigration and Nationality Act (the Act) former § 301(g), 8 U.S.C. § 1401(g). The Director, El Paso, Texas Field Office, denied the application. We dismissed a subsequent appeal. The matter is now before us on motion to reopen and reconsider. The motion will be denied.

The record reflects that the Applicant was born out of wedlock in Mexico on [REDACTED] 1982 and that his birth certificate lists only his mother, who is a native and citizen of Mexico and has never been a U.S. citizen. The Applicant's claim that [REDACTED] a U.S. citizen, is his father is not in dispute. The Applicant's parents were married in 2011. The Applicant claims to have acquired U.S. citizenship at birth through his father.

Although finding the evidence sufficient to establish the identity of the Applicant's natural father, the Director concluded the Applicant had failed to meet all the requirements of section 309(a) of the Act, 8 U.S.C. § 1409(a), as amended. *Decision of Field Office Director*, November 12, 2013. The Director noted that the Applicant did not demonstrate that his father had legitimated or acknowledged him, or agreed in writing to provide for his financial support. On appeal, we also concluded the record evidence was insufficient to meet the requirements of section 309(a) of the Act. *Decision of the AAO*, July 8, 2014.

On motion, the Applicant asserts that new evidence establishes his father agreed in writing to provide financial support for him until he reached the age of 18 and acknowledged paternity in writing under oath, and he thus meets the requirements of section 309(a) of the Act. In support of the motion, the Applicant provides documentation dating to the 1980s that was not previously submitted, as well as correspondence dated July 2014 from an attorney in Mexico. The entire record was reviewed and considered in rendering this decision.

According to USCIS regulations, a motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when

filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

We conduct appellate review on a de novo basis. *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. *Chau v. INS*, 247 F.3d 1026, 1028 n.3 (9th Cir. 2001). The applicant in this case was born in 1982. Accordingly, former section 301(g) of the Act, as in effect in 1982, controls his claim to acquired citizenship.¹

Former section 301(g) 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

As noted in our previous decision, due to the Applicant's out of wedlock birth, former section 301(g) of the Act is applicable to his case only upon fulfillment of the conditions specified in section 309(a) of the Act, which were revised in 1986. 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 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 (INAA), Pub. L. No. 99-653, 100 Stat. 3655. 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*.

Because the Applicant cannot establish paternity by legitimation prior to 1986, and as he was under the age of 18 in 1986 when the amended section 309(a) of the Act went into effect, current section 309(a) of the Act is applicable to his case.

Section 309(a) of the Act states, in relevant 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

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.

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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.

Section 309(a)(3) of the Act requires the Applicant to show that his father agreed in writing to support him financially until he turned 18. On appeal, we noted that the 1982 and 1989 letters from the Applicant's father to the Applicant's paternal grandparents indicating an intention to support the Applicant failed to establish he planned such support to continue until the Applicant reached 18. On motion, the Applicant has produced a letter dated August 29, 1986 in which his father promises his mother such support for the Applicant. These letters do not establish compliance with section 309(a)(3) of the Act.

First, the original handwritten 1986 letter is not notarized, and was not previously provided either with the Form N-600 or in response to the May 23, 2013 request for evidence of a written agreement to provide support until age 18. Failure to produce this evidence earlier is not explained. Second, while the letter announcing the Applicant's birth was purportedly sent October 27, 1982² [REDACTED] after the Applicant's birth), the Applicant's father testified at his son's 2013 N-600 interview that he didn't learn of the birth until several months after the event. Third, while the Applicant's father claimed in a July 23, 2013 statement to have visited his son constantly from 1982 to 1993, the Applicant's father's 1989 letter recounts having been unable to visit his son, since the Applicant's mother never let her son's father see him. These inconsistencies and contradictions raise questions about the authenticity of the recently produced 1986 letter, and the evidence remains insufficient to demonstrate the existence of a satisfactory support agreement prior to the Applicant's eighteenth birthday.

Credible evidence is similarly lacking to show the Applicant was legitimated or acknowledged or that his paternity was established prior to the age of 18. We noted on appeal the Applicant was not legitimated under the laws of [REDACTED] Mexico, his place of birth, nor was his paternity adjudicated by a court, and he therefore does not meet the requirements of section 309(a)(4)(A) or

² The RFE response contains an envelope postmarked October 27, 1982 and counsel's transmittal letter claims the accompanying undated handwritten letter to have been written on that date, but the letter itself is undated.

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309(a)(4)(C) of the Act. In support of the claim that his father formally acknowledged paternity as provided in section 309(a)(4)(B), the Applicant provides the statement of a lawyer in a firm he claims his father contacted in 1988 with the intention of acknowledging the Applicant. The Applicant submits both the lawyer's statement, dated July 22, 2014, referencing a purported June 20, 1988 paternity acknowledgement by the Applicant's father and a copy of the actual, purportedly notarized statement from 1988. Even were the aforementioned acknowledgement considered a legally sufficient document if signed before a notary, the authenticity of the document is in question as there is no original document on record, and there is no explanation for the failure to produce such a clearly relevant document in response to the request for evidence or in support of the appeal. We further note that a letter from the same law firm, dated December 2013 and submitted with the appeal, explains the inability to continue with the official acknowledgement of paternity due to the absence of both the mother and the child to be acknowledged, but does not mention the notarized statement purportedly made by the Applicant's father that same day. This newly submitted documentation does not overcome our prior conclusion that, whatever his intentions might have been, the Applicant's father failed to execute the "public notarial instrument" necessary for an acknowledgment in this case.³

For the foregoing reasons, as the Applicant has not met the requirements of section 309(a) of the Act, as amended, he cannot establish having derived U.S. citizenship under former section 301(g) or under any other provision of the law.⁴

The burden of proof rests on the claimant to establish the claimed citizenship by a preponderance of the evidence. *See* 8 C.F.R. § 341.2(c). Here, the Applicant has not met this burden.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of C-M-*, ID#12959 (AAO Oct. 22, 2015)

³ Under the Civil Code of the State of [REDACTED] (as amended), acknowledgment may be achieved in 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. *See* Library of Congress Advisory Opinion LOC 2010-004768, *Report for U.S. Citizenship and Immigration Services—State Law on Legitimation and Distinctions Between Children Born In and Out of Wedlock* (April 2011).

⁴ Because the Applicant failed to satisfy section 309(a), we need not address whether before the Applicant's birth his father lived here for the required 10 years, at least three of which were after turning 14, required to transmit citizenship. We note that record evidence has not yet been found sufficient to establish his pre-1982 physical presence.