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

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

MATTER OF R-S-M-

DATE: FEB. 24, 2016

APPEAL OF HOUSTON 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) § 301(g), 8 U.S.C. § 1401(g) (amended by Pub. L. No. 95-432, 92 Stat. 1046 (1978)). The Director, Houston Field Office, denied the application. The matter is now before us on appeal. The appeal will be dismissed.

The record reflects that the Applicant was born on [REDACTED] in [REDACTED] Mexico, to a U.S. citizen father and a Mexican citizen mother. The Applicant's parents subsequently married in Texas on [REDACTED] 2007. The Applicant seeks a certificate of citizenship indicating that she acquired U.S. citizenship at birth through her father pursuant to section 301(g) of the Act.

On April 3, 2015, the Director denied the Form N-600, Application for Certificate of Citizenship, finding that the Applicant did not acquire citizenship at birth because she did not establish that she was legitimated or acknowledged by her father before she turned 18 years of age.

On appeal, the Applicant submits additional evidence to establish that she has a relationship with her father. In addition, the Applicant submits a 2004 advisory opinion from the Law Library of Congress (LOC 2004-416) regarding legitimation laws in [REDACTED] Mexico, and a decision of the U.S. Court of Appeals for the Fifth Circuit (Fifth Circuit), *Iracheta v. Holder*, 730 F.3d 419 (5th Cir. 2013), to prove that she was legitimated under the law of [REDACTED] Mexico.

The record includes, but is not limited to: the documents listed above; birth, marriage, and divorce certificates; copies of selective service records of the Applicant's father; a transcript of his social security earnings; a family census record, and affidavits. All evidence was reviewed and considered in rendering the decision on appeal.

We conduct appellate review on a *de novo* basis. Because the Applicant was born abroad, she is presumed to be a foreign national and bears the burden of establishing her 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 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*

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*Naturalization Service*, 247 F.3d 1026, 1029 n.3 (9th Cir. 2001) (internal quotation marks and citation omitted).

The Applicant was born on [REDACTED] to a U.S. citizen father and a foreign national mother. Accordingly, her citizenship claim falls within the provisions of section 301 of the Act, which provides, in pertinent part:

The following shall be nationals and citizens of the United States at birth:

....

(g) 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 five years, at least two of which were after attaining the age of fourteen years. .

..

Accordingly, the Applicant must first establish that her father was a U.S. citizen who resided in the United States for at least 5 years, 2 of which were after his 14th birthday. The Applicant has demonstrated that her father is a U.S. citizen, as the Applicant submitted a copy of her father's birth certificate to show that he was born on [REDACTED] 1952, in Texas, and a copy of his U.S. passport issued in 2009. The Applicant has also shown that her father was physically present in the United States prior to her birth for 5 years, 2 of which were after his 14th birthday on [REDACTED] 1966. The evidence pertaining to the father's physical presence in the United States includes a copy of his baptismal certificate issued in [REDACTED] in Texas, a copy of a [REDACTED] School District 1961-1962 census, on which he is reported as a resident of [REDACTED] Texas, a transcript of a social security earnings showing that the Applicant's father worked in the United States between 1975 and 1982, and selective service documents, which show that he was registered with the selective service in the United States between 1970 and 1972. We find this evidence sufficient to demonstrate that the Applicant's father was physically present in the United States for the requisite time period mandated by section 301(g) of the Act.

Because the Applicant was born out of wedlock, she must additionally demonstrate that she satisfies the conditions set forth in section 309(a) of the Act, 8 U.S.C. § 1409(a), for acquisition of citizenship under section 301(g) of the Act. Prior to November 14, 1986, section 309 of the Act required a father's paternity to be established by legitimation before a child reached 21 years of age. On November 14, 1986, the Immigration and Nationality Act Amendments of 1986, Pub. L. No. 99-653, 100 Stat. 3655 (INAA), amended section 309, applying the changed provisions to persons who were not yet 18 years of age on November 14, 1986. Because the Applicant was born in [REDACTED] after the effective date of the amendments, her application must be considered under the amended section 309 of the Act.

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The amended 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 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 Director determined that the Applicant did not meet the requirement of section 309(a)(4) of the Act pertaining to legitimation because her parents did not marry until [REDACTED], 2007, when she was over 18 years of age. Thus, the Director concluded that the Applicant was not legitimated or acknowledged by her U.S. citizen father under the laws of the Applicant's domicile as provided in section 309(a)(4) of the Act.

On appeal, the Applicant submits a 2004 advisory opinion of the Law Library of Congress discussing legitimation laws of [REDACTED] Mexico, at the time she was born, and a Fifth Circuit Court of Appeal's decision, *Iracheta v. Holder*, 730 F.3d 419, discussing the issue of legitimation in [REDACTED] Mexico in the context of citizenship proceedings under sections 301(g) and 309(a) of the Act.

The Applicant's proceedings fall within the jurisdiction of the Fifth Circuit. The Fifth Circuit explained in *Iracheta v. Holder*, 730 F.3d 419, 425 (5<sup>th</sup> Cir. 2013) that "acknowledged" children under the pre-1987 Civil Code of [REDACTED] 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 Fifth Circuit concluded that a child's paternity is established by legitimation under the Civil Code of [REDACTED] 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 [REDACTED] can be accomplished in the birth certificate before the civil registry official. *Id.*

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The record contains the Applicant's birth certificate, which shows that on July 25, 1990, her mother and her father both appeared before a civil registry official in [REDACTED] to register her birth. The Applicant's father is named on the birth certificate as her natural father. In view of the foregoing, and pursuant to the Fifth Circuit's holding in *Iracheta v. Holder, supra*, we conclude that the Applicant's paternity was established by legitimation when her father acknowledged the Applicant as his child on the birth certificate before the civil registry officer prior to the Applicant's 18th birthday. Accordingly, we find that the Applicant satisfies the requirement of section 309(a)(4) of the Act regarding paternity and legitimation for the purposes of acquisition of U.S. citizenship under section 301(g) of the Act.

The Applicant has also demonstrated that she meets several other requirements of section 309(a) for acquisition of citizenship under section 301(g) of the Act.

The Applicant has submitted sufficient evidence to show that her father was a U.S. citizen at the time of her birth. Therefore, the Applicant satisfies the requirements of sections 301(g) and 309(a)(2) of the Act regarding the U.S. citizenship of her father. Furthermore, the Applicant has shown by clear and convincing evidence that she is related by blood to her U.S. citizen father. This evidence includes the Applicant's timely-registered birth certificate naming her father, and the Applicant's 1992 baptismal certificate, on which both her parents are listed. Thus, the Applicant has established that she meets the requirement of section 309(a)(1) of the Act.

However, the Applicant has not submitted evidence to demonstrate that she meets the provision of sections 309(a)(3) of the Act, which requires her to show that her U.S. citizen father agreed in writing to provide financial support for the Applicant until she reached the age of 18 or, in the alternative, that she was not subject to this requirement because her father was deceased.

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 R-S-M-*, ID# 15405 (AAO Feb. 24, 2016)