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

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

MATTER OF R-M-P-D-F-

DATE: JULY 11, 2016

APPEAL OF HIALEAH, FLORIDA FIELD OFFICE DECISION

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

The Applicant, a native and citizen of Venezuela, seeks a Certificate of Citizenship. *See* Immigration and Nationality Act (the Act) section 301(a)(7), 8 U.S.C. § 1401(a)(7), *amended by* Act of October 10, 1978, Pub. L. No. 95-432, 92 Stat. 1046; section 309(a), 8 U.S.C. § 1409(a), *amended by* Act of November 14, 1986, Pub. L. No. 99-653, 100 Stat. 3655. An individual born outside the United States who acquired U.S. citizenship at birth, or who automatically derived U.S. citizenship after birth but before the age of 18, may apply to receive a Certificate of Citizenship. For an individual claiming to be a U.S. citizen at birth, who was born to unmarried parents between December 24, 1952, and November 14, 1968, and is claiming citizenship through a U.S. citizen father, the father must have been physically present in the United States for 10 years (with at least 5 years occurring after the age of 14) before the individual's birth and the individual must also satisfy legitimation requirements.

The Field Office Director, Hialeah, Florida, denied the application. The Director concluded that the Applicant was not eligible for a Certificate of Citizenship because she did not demonstrate that her paternity was established by legitimation prior to the Applicant's 21st birthday, as required for acquisition of citizenship at birth under former section 301(a)(7) of the Act.

The matter is now before us on appeal. In the appeal, the Applicant submits additional evidence and claims that she was legitimated by her father under Venezuelan law, and that the Director erred in not approving her Form N-600, Application for Certificate of Citizenship.

Upon *de novo* review, we will dismiss the appeal. The Applicant has not demonstrated that paternity was established by legitimation.

I. LAW

The record reflects that the Applicant was born on [REDACTED] in Venezuela to unmarried parents, a U.S. citizen father and a Venezuelan citizen mother. The Applicant's parents did not marry at any time after the Applicant's birth. The Applicant seeks a Certificate of Citizenship indicating that she acquired U.S. citizenship at birth from her father.

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 former section 301(a)(7) of the Act, which provided, in pertinent part, that the following individuals acquired citizenship 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: *Provided*, That any periods of honorable service in the Armed Forces of the United States by such citizen parent may be included in computing the physical presence requirements of this paragraph.

Because the Applicant was born out of wedlock, she must also satisfy the requirements of section 309(a) of the Act, which pertains to legitimation. Prior to November 14, 1986, section 309(a) of the Act required paternity of a child to be established by legitimation while the child was under the age of 21. The Act of November 14, 1986 amended section 309(a), applying the changed provisions to individuals who were not yet 18 years of age on November 14, 1986, unless their paternity had been established by legitimation before November 14, 1986. The Applicant was 25 years old on November 14, 1986. The legitimation provisions of the old section 309(a) of the Act therefore apply to her case.

Prior to November 14, 1986, section 309(a) of the Act stated, in part:

The provisions of paragraphs (3), (4), (5), and (7) of section 301(a), and of the paragraph (2) of section 308 of this title shall apply as of the date of birth to a child out-of-wedlock . . . if the paternity of such child is established while such child is under the age of twenty-one years by legitimation.

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).

II. ANALYSIS

To establish acquisition of U.S. citizenship at birth the Applicant must show that her father was a U.S. citizen who was physically present in the United States for at least 10 years before the Applicant's birth, 5 of which were after the father's 14th birthday on [REDACTED] 1929. In addition, the

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Applicant must demonstrate that her paternity was established by legitimation before the Applicant's 21st birthday on [REDACTED].

On appeal, the Applicant contests the finding that she was not legitimated by her father under the law in Venezuela, their place of residence, prior to her 21st birthday. She claims that the Venezuelan Constitution, as in effect at the time of her birth and prior to her 21st birthday, provided equal rights to children born in and out of wedlock, and that Venezuelan law and country obligations under international treaties and conventions also provided equal rights to all children regardless of birth or social condition. The Applicant also asserts that her father legitimated her in accordance with reasoning set forth in the U.S. Fifth Circuit Court of Appeals decision, *Iracheta v. Holder*, 730 F.3d 419 (5th Cir. 2013). In addition, she states that she is entitled to U.S. citizenship under the 14th Amendment of the U.S. Constitution because she was born to a U.S. citizen. The record includes excerpts from the Venezuelan Constitution, the Venezuelan Statute of Minors, the American Convention on Human Rights, and the International Covenant on Civil and Political Rights, as well as Fifth Circuit Court of Appeals legal decision information. The record also contains birth certificate and Department of State passport and application for registration information, U.S. census and military records, social security earnings information, and photographs.

The entire record has been reviewed and considered. Upon review, the Applicant has established that she meets several requirements for acquisition of citizenship under former section 301(a)(7) of the Act. Birth certificate evidence for the Applicant demonstrates the parent-child relationship between the Applicant and her father. Birth certificate evidence for the Applicant's father reflects further that he was born a United States citizen. In addition, evidence, including the Applicant's father's birth certificate, U.S. Census records, U.S. military service records, Social Security earnings statements, and Department of State Applications for Registration, demonstrates that the Applicant's father was physically present in the United States for over 10 years prior to the Applicant's birth, at least 5 years of which occurred after his 14th birthday.

The issue in this case is whether the Applicant has satisfied legitimation requirements set forth in former section 309(a) of the Act. We find that the Applicant has not demonstrated that paternity was established by legitimation prior to her 21st birthday, or that she meets former section 309(a) of the Act requirements.

A. Paternity by legitimation

The Applicant asserts that Venezuelan law, as in effect at the time of her birth and prior to her 21st birthday, did not discriminate on the basis of birth, social condition, or filiation, and that laws and the Constitution provided equal rights to children born in and out of wedlock. She states that Venezuelan law and country obligations under international treaties and conventions also mandated equal rights to all children regardless of birth or social condition. The Applicant refers to the Venezuelan Statute of Minors, article 226 of the Venezuelan Civil Code, and to articles 61, 75, and 128 of the Venezuelan Constitution to support her claims. She also cites to the American Convention on Human Rights and the International Covenant on Civil and Political Rights.

A 2015 Library of Congress (LOC) Report addresses the issue of whether the Venezuelan Civil Code, in effect between August 13, 1942, and July 26, 1982, and also indicates that the former Venezuelan Civil Code provided equal rights to children born in and out of wedlock in Venezuela. See LOC Report 2015-011900, entitled, *Venezuela: Status of Natural Children 1969-1982*, (March 2015).¹ The LOC Report clarifies further, however, that under the former Venezuelan Civil Code, legitimation occurred through the marriage of the parents. *Id.* Here, the record does not demonstrate that the Applicant's parents married. The Applicant's father's paternity was therefore not established by legitimation under Venezuelan law.²

The Applicant asserts that her father legitimated her pursuant to reasoning set forth in the Fifth Circuit Court of Appeals decision which allowed for legitimation of child born out of wedlock to occur based on a father's acknowledgement of paternity by placing his name on the birth certificate before the Civil Registry. See *Iracheta v. Holder*, 730 F.3d 419, *supra*. However, the Applicant's case arises within the jurisdiction of the Eleventh Circuit Court of Appeals. The *Iracheta* decision is therefore not binding in the Applicant's case. See *N.L.R.B. v. Ashkenazy Property Management Corp.*, 817 F.2d 74, 75 (9th Cir. 1987) (the AAO is bound by the Act, agency regulations, precedent decisions of the agency, and published decisions from the circuit court of appeals where the action arose.) See also, *Matter of K-S-*, 20 I&N Dec. 715, 719-20 (BIA 1993) and *Matter of Anselmo*, 20 I&N Dec. 25, 31 (BIA 1989). Moreover, even if the decision in *Iracheta* were binding, the decision did not address the issue on appeal in the Applicant's case. The decision in *Iracheta* pertained to legitimation law in Tamaulipas, Mexico. The issue in the Applicant's case pertains to legitimation law in Venezuela. As discussed above, under the former Venezuelan Civil Code marriage of the parents was required in order for legitimation to occur.

The Applicant also claims that she is entitled to U.S. citizenship under the 14th Amendment of the U.S. Constitution, because she was born to a U.S. citizen. However, the 14th Amendment pertains to "all persons . . . born in the United States. . . ." and the Applicant was not born in the United States. See U.S. Const. amend. XIV, § 1. The Applicant's claim therefore does not fall within the provisions of the 14th Amendment. As discussed above, 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 1029 n.3. In this case, the Applicant's acquisition of citizenship claim falls within the provisions of former sections 301(a)(7) and 309(a) of the Act.

¹ The LOC report also indicated that under the former Venezuelan Civil Code, children born out of wedlock had the same status as legitimate children with regard to their father, except when explicitly stated by law. An exception to the equal status of children born in an out of wedlock existed with regard to inheritance rights from the father's estate, with children born out of wedlock inheriting one half of the inheritance portion of a child born in wedlock.

² A new Venezuelan Civil Code went into effect on July 26, 2002; however, the Applicant was over the age of 21 at that time, and the new provisions were not retroactive. The former Venezuelan Code provisions referred to in the 2015 LOC report therefore apply in her case.

III. CONCLUSION

In view of the above, the Applicant has not demonstrated that paternity was established by legitimation before the Applicant turned 21, as required under former section 309(a) of the Act. Accordingly, the Applicant has not shown that she acquired U.S. citizenship at birth through her U.S. citizen father pursuant to former section 301(a)(7) of the Act.

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). The Applicant has not met that burden. Accordingly, we dismiss the appeal.

ORDER: The appeal is dismissed.

Cite as *Matter of R-M-P-D-F-*, ID# 16591 (AAO July 11, 2016)