

(b)(6)



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

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

MATTER OF J-H-G-J-

DATE: JULY 28, 2016

APPEAL OF HOUSTON, 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) 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, 1986, 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, Houston, Texas, denied the application. The Director concluded that the Applicant did not demonstrate that his father was physically present in the United States for 10 years prior to the Applicant's birth, at least 5 years of which occurred after his father turned 14, as required to acquire 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 the totality of the evidence in the record sufficiently establishes that his father met U.S. physical presence requirements contained in the Act.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

The record reflects that the Applicant was born on [REDACTED] in [REDACTED] Mexico, to unmarried parents. The Applicant's father, now deceased, was born in Texas in [REDACTED] and was a U.S. citizen. His mother was born in Mexico and is not a U.S. citizen. The Applicant's parents married on [REDACTED] 1994, when the Applicant was [REDACTED] years old. The Applicant seeks a Certificate of Citizenship indicating that he acquired U.S. citizenship at birth from his father.

(b)(6)

Matter of J-H-G-J-

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, 1029 n.3 (9th Cir. 2001) (internal quotation marks and citation omitted). The Applicant was born in [REDACTED] to a U.S. citizen father and a foreign national mother. Accordingly, his citizenship claim falls within the provisions of former section 301(a)(7) of the Act, which provided that the following 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, he must also satisfy the requirements of section 309(a) of the Act, which pertain 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 21.¹

Former section 309(a) of the Act stated, in part:

(a) 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, 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).

¹ The Act of November 14, 1986, amended former section 309(a), allowing individuals who were at least 15 years of age, but under 18 years of age, as of the date of the enactment of the Act, to elect application of either old, or the amended section 309(a) section of the Act. The Applicant was 15 years old on November 14, 1986. Accordingly, he may satisfy the requirements pertaining to legitimation under either the old or the amended section 309(a) of the Act. We will not analyze whether the Applicant meets the legitimation provisions of the amended section 309(a), however, because we are satisfied that his paternity was established by legitimation under former section 309(a).

Matter of J-H-G-J-

II. ANALYSIS

The Applicant's legitimation by his U.S. citizen father is not at issue in this case.² At issue is whether the Applicant has demonstrated that his father was physically present in the United States for 10 years before the Applicant's birth in [REDACTED] at least 5 years of which were after his father's 14th birthday in [REDACTED]. The Applicant asserts that the Director erroneously determined that his father did not meet U.S. physical presence requirements, and that the evidence in the record demonstrates that his father began residing in the United States in 1929. The Applicant submits new evidence from a genealogy resource website and a copy of his father's social security card on appeal. Previously submitted evidence includes affidavits from the Applicant's father and family members, U.S. Census information for the Applicant's father, and birth and baptism certificate evidence. The entire record has been reviewed and considered. Upon review, we find that the evidence is insufficient to demonstrate that the Applicant's father was physically present in the United States for the requisite period set forth in former section 301(a)(7) of the Act.

The Applicant was born in [REDACTED] Mexico in [REDACTED] to a U.S. citizen father and a foreign national mother. To establish acquisition of U.S. citizenship at birth under these circumstances, the Applicant must therefore show that his father 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 in [REDACTED].

The record contains the Applicant's father's birth certificate demonstrating that he was born in Texas in [REDACTED]. A baptism certificate demonstrates that the Applicant's father was baptized in Texas in [REDACTED] 1929, and United States Census evidence reflects that the Applicant's father lived in Texas in 1930. This evidence establishes that the Applicant's father was physically present in the United States for 2 years in 1929 and 1930.

Evidence from a genealogy resource website reflects that the Applicant's father's name was found in Volume 2 of the U.S. Public Record Index, which covers a time period between 1950 and 1993; however, the website information contains no other details pertaining to the Applicant's father, and the information does not specify the exact context in which the Applicant's father's name appears, or the exact years that the Applicant's father's name appeared in public records.

The Applicant's father stated in an affidavit that he was born in [REDACTED] Texas in [REDACTED] and lived at a maternal aunt's house in [REDACTED] and in the [REDACTED] area during his childhood until about 1953. He claimed that he moved with his family to a paternal aunt's house in [REDACTED] around 1953. He also indicated that he attended [REDACTED] in [REDACTED] for three or four years. The Applicant's father stated that after his mother passed away around [REDACTED] he moved to [REDACTED] for four or five years. He also indicated that he moved to [REDACTED] Mexico for about a month in [REDACTED].

² The Applicant was legitimated by his father in [REDACTED] Mexico in 1985, prior to his 21st birthday, when his father acknowledged the Applicant as his son on a birth certificate before a civil registry official. See *Iracheta v. Holder*, 730 F.3d 419 (5th Cir. 2013).

(b)(6)

Matter of J-H-G-J-

1964 or 1965, when he met the Applicant's mother, but that he then returned to his residence and work in Texas, visiting the Applicant's mother and their children in Mexico most weekends.

The Applicant's father's statements are general, and do not include specific dates of residence in the United States or detailed information about where he lived in the United States. The statements also lack specific details about where and when the Applicant's father worked and for whom, and the record contains no independent documentary evidence to corroborate the statements.

The Applicant's mother states in her affidavit, that she met the Applicant's father in [REDACTED] Mexico in 1965, and that he returned to Texas to live and work a month after they met, but visited her in Mexico on weekends. The Applicant's mother also mentions cities in Texas where she claims the Applicant's father lived between 1965 and 1971; however, because she lived in Mexico during this time period she has no personal knowledge of the Applicant's father's U.S. physical presence.

Affidavit claims made by the Applicant's father's brother and cousin also lack specificity and detail with regard to the Applicant's father's U.S. physical presence. The Applicant's father's younger brother indicates simply that as a child he lived with the Applicant's father and their family at an aunt's house in [REDACTED] and that the Applicant's father lived in the United States his entire life, except for one or two visits to Mexico when he was in his 60s. The Applicant's father's cousin states that she was born in [REDACTED] in [REDACTED] the Applicant's father and his family stayed with her family in [REDACTED] until around 1956, and that she heard that the Applicant's father went to [REDACTED]. The statements lack specific dates and locations where the Applicant's father lived, and they lack details establishing interactions with the Applicant's father during the claimed time periods.

Upon review, the record does not demonstrate by a preponderance of the evidence that the Applicant's father was physically present in the United States for 10 years prior to the Applicant's birth in [REDACTED] at least 5 years of which were after he turned 14, in [REDACTED]. Birth certificate, baptism, and U.S. Census evidence demonstrates that the Applicant's father was physically present in the United States for two years between 1929 and 1930; however, affidavit statements claiming U.S. presence for additional years do not sufficiently establish their claims. The record lacks independent residence, school, employment, or other documentary evidence to demonstrate that the Applicant's father was present in the United States after 1930. The record also lacks evidence or statements clarifying whether the Applicant attempted to obtain such corroborative evidence, and the results of any attempts to do so.

III. CONCLUSION

In view of the above, the Applicant has not demonstrated that his father was physically present in the United States for 10 years prior the Applicant's birth, at least 5 years of which were after his father turned 14. Accordingly, the Applicant has not established that he acquired U.S. citizenship at birth through his U.S. citizen father pursuant to former section 301(a)(7) of the Act.

Matter of J-H-G-J-

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 J-H-G-J-*, ID# 16389 (AAO July 28, 2016)