



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

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

MATTER OF D-M-G-

DATE: JAN. 29, 2016

APPEAL OF HARLINGEN FIELD OFFICE DECISION

MATTER: SECTION 342 CANCELLATION: ADMINISTRATIVE CANCELLATION OF  
CERTIFICATE, DOCUMENT, OR RECORD

The Appellant seeks review of the cancellation of her Certificate of Citizenship. *See* Immigration and Nationality Act (the Act) § 342, 8 U.S.C. § 1453. On May 18, 2006, the Director, Harlingen Field Office, cancelled the Appellant's Certificate of Citizenship. The Appellant filed a motion to reconsider the cancellation of her Certificate of Citizenship, but the Director denied the motion on September 2, 2008. On May 22, 2014, the Appellant filed a second motion to reconsider the cancellation of her Certificate of Citizenship, but the Director declined to reopen the matter in a decision dated November 14, 2014. The matter is now before us on appeal. The appeal will be dismissed.

The record reflects that the Appellant was born on [REDACTED] in [REDACTED] Mexico, to unmarried parents. The Appellant's father was a U.S. citizen born in Texas. The Appellant's mother was born in Mexico and was not a U.S. citizen. The Appellant's parents were purportedly married in Texas on [REDACTED] 1972, despite the fact that the Appellant's father was already married to another woman, whom he did not divorce. The Appellant claims that she acquired U.S. citizenship at birth through her father. *See* § 301 of the Act, 8 U.S.C. § 1401 (1962) (amended by Pub. L. No. 95-432, 92 Stat. 1046 (1978)).

The Appellant filed her first Form N-600, Application for Certificate of Citizenship, on November 17, 1972, indicating that her U.S. citizen father had been married twice. U.S. Citizenship and Immigration Services (USCIS) requested evidence that the first marriage of the Appellant's father was terminated before he married the Appellant's mother, but such evidence was never submitted. The record reflects that the Appellant's mother testified before USCIS on December 10, 1974. She attested that although the Appellant's father had filed for a divorce from his first spouse, the divorce was not finalized before their marriage on [REDACTED] 1972. USCIS took no further action on the application. On December 16, 1983, the Appellant filed her second Form N-600. This application was approved and the Appellant was issued a Certificate of Citizenship on November 5, 1984.

On February 4, 1991, the Director issued a notice of intent to cancel the Appellant's Certificate of Citizenship pursuant to section 342 of the Act on the basis that the Appellant did not acquire citizenship pursuant to former section 301 of the Act because she was not legitimated by her U.S. citizen father. Specifically, the Director alleged that because the Appellant's father was still married

to his first spouse at the time he married the Appellant's mother, the marriage did not serve to legitimate the Appellant. On May 18, 2006, the Director cancelled the Appellant's Certificate of Citizenship, and the Appellant surrendered the certificate to USCIS on June 8, 2006.

The Appellant subsequently filed two motions to reconsider the cancellation of her Certificate of Citizenship, but the Director denied both motions. On appeal, the Appellant asserts that the Director erred in concluding that she was not legitimated, as her U.S. citizen father acknowledged paternity of the Appellant. The Appellant states that her father swore under oath and in writing before the officials of the USCIS, Internal Revenue Service (IRS), and Social Security Administration (SSA), that she was his natural child. In support of this assertion, the Appellant submits a computer printout from the SSA to show that she was the recipient of benefits of supplemental security income as her father's child. Although on the Form I-290B, Notice of Motion or Appeal, the Appellant indicated that a brief and/or additional evidence would be submitted within 30 calendar days of filing the appeal, to date we have not received additional documents.

In addition to the SSA printout the Appellant submits on appeal, the evidence of the record includes birth, marriage, and death certificates previously submitted by the Appellant in support of the Form N-600, and briefs that accompanied her two motions.

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 appeal.

Section 342 of the Act, 8 U.S.C. § 1453, provides, in relevant part, that:

The [Secretary of the Department of Homeland Security] is authorized to cancel any certificate of citizenship . . . if it shall appear to [his] satisfaction that such document or record was illegally or fraudulently obtained from, or was created through illegality or by fraud practiced upon, him or the Commissioner or a Deputy Commissioner; but the person for or to whom such document or record has been issued or made shall be given at such person's last-known place of address written notice of the intention to cancel such document or record with the reasons therefore and shall be given at least sixty days in which to show cause why such document or record should not be canceled. The cancellation under this section of any document purporting to show the citizenship status of the person to whom it was issued shall affect only the document and not the citizenship status of the person in whose name the document was issued.

As noted above, the Director properly notified the Appellant in 1991 of the intent to cancel the Certificate of Citizenship and afforded the Appellant an opportunity to respond as required by the Act and the regulations. The notice of intent to cancel the Certificate of Citizenship was mailed to the Appellant and her counsel by certified mail. The record includes an undated copy of the notice which was mailed to the Appellant, and which was returned to USCIS as undeliverable on February 9, 1991. Although in the brief submitted with the June 8, 2006, motion to reconsider, counsel for the

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Appellant asserted that he also did not receive the notice of intent to cancel the Appellant's Certificate of Citizenship, we find that the Director properly notified the Appellant of the intent to cancel the Certificate of Citizenship and afforded him an opportunity to respond as required under section 342 of the Act and the corresponding regulations by sending the notice to the Appellant and his counsel at their last known addresses of record.

We now analyze whether the Director correctly determined that the Appellant obtained her certificate of citizenship legally. Because the Appellant 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 "preponderance of the evidence" standard requires that the record demonstrate that the Appellant'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, 1029 n.3 (9th Cir. 2001) (internal quotation marks and citation omitted). The Appellant was born on [REDACTED] Accordingly, former section 301(a)(7) of the Act controls her citizenship claim.<sup>1</sup>

Former section 301(a)(7) of the Act stated, in pertinent 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: *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.

Additionally, because the Appellant was born out of wedlock, she must satisfy the provisions set forth in former section 309(a) of the Act, 8 U.S.C. § 1409(a), which provided, in pertinent part:

The provisions of . . . section 301(a) . . . shall apply as of the date of birth to a child born out of wedlock on or after the effective date of this Act, if the paternity of such child is established while such child is under the age of twenty-one years by legitimation.

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<sup>1</sup> Section 301(a)(7) of the Act was re-designated as section 301(g) by the Act of October 10, 1978, Pub. L. No. 95-432, 92 Stat. 1046 (1978). The requirements of section 301(a)(7) remained the same after the re-designation and until 1986.

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Former section 309(a) of the Act applies to individuals who had attained 18 years of age on November 14, 1986, the date of the enactment of the Immigration and Nationality Act Amendments of 1986, Pub. L. No. 99-653, 100 Stat. 3655 (1986). See Section 8(r) of the Immigration Technical Corrections Act of 1988, Pub. L. No. 100-525, 102 Stat. 2609 (1988). Because the Appellant was over 18 years of age on November 14, 1986, she must show that her paternity was established by legitimation before her 21st birthday on [REDACTED]

According to a 2012 advisory opinion from the Library of Congress (LOC 2012-008314), between October 24, 1961, and January 31, 1987, under the 1961 Civil Code of Tamaulipas (the Tamaulipas Code)<sup>2</sup> a child of unmarried parents could be legitimated by the subsequent marriage of the parents and the parents' acknowledgment of the child, done together or separately, before the marriage, in the marriage ceremony, or during the duration of the marriage. The father's acknowledgment of paternity on the birth record alone was not sufficient to legitimate the child, and the marriage of the parents was an absolute requirement for legitimation.

The Appellant does not dispute that the marriage between her U.S. citizen father and her natural mother on [REDACTED] was void when contracted and, therefore, did not serve to legitimate her. The Appellant asserts, however, that she was legitimated by her U.S. citizen father because he acknowledged her as his child.

The Appellant's proceedings fall within the jurisdiction of the U.S. Court of Appeals for the Fifth Circuit (the Fifth Circuit), which has determined that despite the distinction between "acknowledgement" and "legitimation" under the laws of Tamaulipas, Mexico, a child whose father placed his name on the birth certificate before the Civil Registry was an "acknowledged" child and had the same filial rights vis-à-vis the father as a "legitimated" child. See *Iracheta v. Holder*, 730 F.3d 419, 426-427 (5th Cir. 2013). Thus, a child's paternity was established by legitimation according to the laws of Tamaulipas, Mexico, as required by section 309 of the Act when the father "acknowledged" the child pursuant to the provisions of the Tamaulipas Code in effect at the child's birth. *Id.* at 427. Accordingly, if the Appellant was acknowledged by her U.S. citizen father in accordance with the Tamaulipas Code, as in effect between October 24, 1961, and the Appellant's 21st birthday on [REDACTED] she would have satisfied the requirement of former section 309(a) of the Act pertaining to acknowledgment of paternity by legitimation.

According to the Library of Congress advisory opinion, *supra*, Article 370 of the Tamaulipas Code, as in effect at the time of the Appellant's birth, stated that filiation of children born out of wedlock, with respect to the father could be established only by voluntary acknowledgment or by a court judgment declaring paternity. Further, Article 379 of the Code provided that the acknowledgment of a child born out of wedlock had to be made in one of the following ways:

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<sup>2</sup> CÓDIGO CIVIL PARA EL E. L. Y S. DE TAMAULIPAS, OFFICIAL EDITION (Editorial Cajica, Puebla, 1961).

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- I. In the birth certificate, before the official of the Civil Registry;
- II. By special acknowledgement proceeding (*acta especial*) before the same official;
- III. By public instrument (notarized document);
- IV. By testament; [or]
- V. By direct and express declaration in court.

The record contains the Appellant's birth certificate, which shows that her birth was registered in Tamaulipas on [REDACTED] by someone other than either of her parents. Unlike in *Iraheta v. Holder*, therefore, the record does not establish that the Appellant's father personally acknowledged the Appellant as his child on the birth certificate before the official of Civil Registry in accordance with the provisions of Article 379 of the Tamaulipas Code. Further, the record contains no evidence to indicate that the Appellant's father acknowledged her as his child under any of the other provisions of Article 379 of the Tamaulipas Code. Therefore, we cannot find that the Appellant's paternity was established by legitimation under the laws of Tamaulipas, Mexico, for the purposes of acquisition of U.S. citizenship under former section 301(a)(7) of the Act.

The Appellant asserts that she was nevertheless acknowledged by her father because he testified before USCIS, IRS, and SSA that she was his child. However, the record does not contain any documents memorializing her father's testimony before USCIS or IRS. The Appellant submits a copy of the SSA statement dated March 31, 1989, indicating that she was the recipient of benefits of supplemental security income as her father's child. However, there is no evidence to establish that recognition of eligibility to receive supplemental security income by the U.S. Government is sufficient to satisfy any of the "acknowledgement" provisions of Article 379 of the Tamaulipas Code. Further, the only evidence regarding the residence of the Appellant's father in the United States after her birth in [REDACTED] is a death certificate showing that he resided in Texas at the time of his death in 1980. The record also contains no evidence to show that the Appellant's paternity was established by legitimation under the law of the State of Texas.

We find, therefore, that the record does not demonstrate that the Appellant's paternity was established by legitimation under the law of the Appellant's or her father's domicile prior to the Appellant's 21st birthday as required by former sections 301(a)(7) and 309(a) of the Act. Having determined that the Appellant does not satisfy the requirement of acknowledgement by legitimation, we do not reach the issue of whether the Appellant's father had the physical presence in the United States prior to the Appellant's birth required to transmit U.S. citizenship to her under former section 301(a)(7) of the Act.

The burden of proof in cancellation proceedings is on the government, and cancellation of a certificate of citizenship is authorized "if it shall appear to the [Secretary of Homeland Security's] satisfaction that such document...was illegally or fraudulently obtained..." We find that the Director has met this burden of proof and that the Appellant's certificate of citizenship was properly cancelled.

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**ORDER:** The appeal is dismissed.

Cite as *Matter of D-M-G-*, ID# 14683 (AAO Jan. 29, 2016)