**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals*
*Office of the Clerk*

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**Name: FELIZ-VALLES, MARIBEL**

**A 090-351-513**

**Date of this notice: 5/17/2018**

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:
Greer, Anne J.

Userteam: Docket

File: A090 351 513 – Houston, TX

Date: MAY 17 2018

In re: Maribel FELIZ-VALLES

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Ruben P. Hernandez, Esquire

ON BEHALF OF DHS: Rory H. Potter
Assistant Chief Counsel

APPLICATION: Termination

The Department of Homeland Security (DHS) appeals from the Immigration Judge's December 13, 2017, decision finding that the respondent is a United States citizen and terminating these removal proceedings. The appeal will be dismissed.

This Board must defer to the Immigration Judge's factual findings, including findings as to the credibility of testimony, unless they are clearly erroneous. 8 C.F.R. § 1003.1(d)(3)(i); *see Matter of Z-Z-O-*, 26 I&N Dec. 586 (BIA 2015). We review questions of law, discretion, and judgment de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

The respondent was born out of wedlock in Mexico on April 24, 1972, to a United States citizen father and a Mexican citizen mother. Because she was born abroad, she is presumed to be an alien and bears the burden of establishing her claim to United States citizenship by a preponderance of credible evidence. *See* 8 C.F.R. § 341.2(c); *Matter of Baires-Larios*, 24 I&N Dec. 467, 468 (BIA 2008). Contrary to the DHS's arguments on appeal, we agree with the Immigration Judge that the respondent established that she is a United States citizen pursuant to former section 301(a)(7) (1952) and current section 309(a) of the Immigration and Nationality Act, as applicable, 8 U.S.C. §§ 1401(a)(7), 1409(a).

The only issue presented by this appeal is whether the respondent satisfies the requirements of section 309(a)(4) of the Act.[1] Section 309(a)(4) provides that:

> (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

[1] The DHS concedes that the respondent meets the requirements of former section 301(a)(7) of the Act, as well as sections 309(a)(1)-(3) of the Act (DHS Br. at 4).

> (C) the paternity of the person is established by adjudication of a competent court.

The Supreme Court of the United States has interpreted section 309(a)(4) as requiring "one of three affirmative steps to be taken if the citizen parent is the father." *Nguyen v. INS*, 533 U.S. 53, 62 (2001). The respondent contends that the DHS misconstrues the statute on appeal by arguing that subsections (A), (B), *and* (C) have to be established (Respondent's Br. at 5-6). However, the DHS's brief makes clear that because the respondent does not assert that she satisfies the requirements of section 309(a)(4)(A) or (C) of the Act, "she must demonstrate that her father completed the acts set out in" section 309(a)(4)(B) of the Act (DHS's Br. at 7-8).

We agree with the Immigration Judge that the respondent established that her father acknowledged paternity in writing under oath before she turned 18 pursuant to section 309(a)(4)(B) of the Act (IJ at 5-6). The record reflects that in June 1987, when the respondent was 15 years old, her father submitted a Form I-134 Affidavit of Support to the former Immigration and Naturalization Service in conjunction with a Form I-687 Application for Temporary Resident Status (Exh. 35). Therein, the respondent's father recognized her as his "daughter," and he signed the form under oath (Exh. 35). These factual findings, which are not clearly erroneous, support the Immigration Judge's determination that the respondent has satisfied the requirements of section 309(a)(4)(B) of the Act (IJ at 5-6).

The DHS argues on appeal that the Form I-134 is not an acknowledgement of paternity (DHS Br. 8). However, on this record, we are persuaded that it is. The DHS is correct that the Form I-134 concerns the ability and willingness to provide support, if necessary, for a period of 3 years to assure the United States government that the beneficiary of the affidavit will not become a public charge (DHS Br. at 8). But, we note that the Form I-134 was also signed under oath by a man who specifically stated that the relationship to the deponent was "daughter" (Exh. 35). The DHS explains that this is not a claim to paternity for purposes of section 309(a)(4)(B) of the Act because a "daughter" could also be an adopted child (DHS's Br. at 8-9). However under that circumstance, there would be no need to analyze section 309(a)(4) of the Act as the citizenship claim would necessarily fail because there was no "blood relationship" established as required by section 309(a)(1) of the Act. While we recognize that "blood relationship" and "paternity" are separate requirements, the fact that the respondent's father referred to her as his "daughter" on a U.S. government form sworn to under oath satisfies section 309(a)(4)(B) of the Act, and is distinct from the genetic test that established the blood relationship in this case.

Accordingly, the following order is entered.

ORDER: The DHS's appeal is dismissed.

FOR THE BOARD