



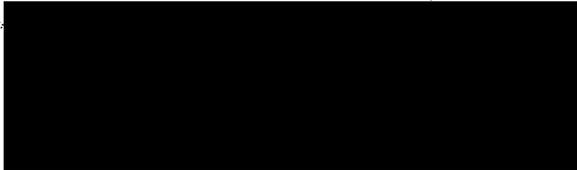
EA

U.S. Department of Justice

Immigration and Naturalization Service

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



FILE [Redacted]

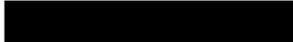
Office: Houston

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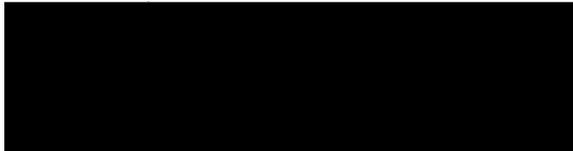
IN RE: Applicant:



APPLICATION:

Application for Certificate of Citizenship under Section 309 (c) of the Immigration and Nationality Act, 8 U.S.C. 1409 (c)

IN BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Acting District Director and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on September 13, 1969, in Mexico. The applicant's father is unknown. The applicant's mother, [REDACTED] (on the birth certificate), was born in East Chicago, Indiana, on April 5, 1927. The applicant claims U.S. citizenship under section 309(c) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1409(c), as a person born out of wedlock to a U.S. citizen mother.

The acting district director denied the application after he determined the record failed to establish the applicant's mother had the required continuous physical presence in the United States prior to his birth.

On appeal, counsel refers to the documents submitted in support of the application: (1) the applicant's Mexican birth certificate showing that his birth was registered approximately 15 years after the fact, and (2) an affidavit in which [REDACTED] states that he has known the applicant's mother since 1956 in El Paso, Texas.

Section 309(c) of the Act states, in pertinent part, that:

Notwithstanding the provision of subsection (a) of this section, a person born after December 23, 1952, outside the United States and out of wedlock shall be held to have acquired at birth the nationality status of his mother, if the mother had the nationality of the United States at the time of such person's birth, and if the mother had previously been physically present in the United States or one of its outlying possessions for a continuous period of one year.

[REDACTED] states that he used to work with the applicant's mother as a farm laborer and recalls that she was residing in El Paso, Texas at a number of different addresses from that time until 1969 when she went to reside in Mexico and lived there a couple of years. [REDACTED] states that the applicant's mother returned to El Paso in 1970 and had lived there on a continuous basis since then. The record fails to contain any corroborating evidence to establish that [REDACTED] was in a position to observe the applicant's mother or that he was residing where he says he was.

The record reflects that the applicant's mother is still living in the United States. However, the record is devoid of any evidence or documentation from her in this matter to support the applicant's claim. Therefore, the applicant has not demonstrated that his U.S. citizen mother met the continuous physical presence requirements as required under section 309(c) of the Act.



In accordance with 8 C.F.R. 341.2(c), the burden of proof rests with the applicant to establish the claimed citizenship by a preponderance of the evidence. The applicant has not met this burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.