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U.S. Department of Homeland Security
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**U.S. Citizenship
and Immigration
Services**

ER

FILE:

Office: LOS ANGELES, CA

Date: JAN 10 2005

IN RE:

Applicant:

APPLICATION:

Application for Certificate of Citizenship pursuant to Section 309(c) of the former Immigration and Nationality Act; 8 U.S.C. § 1409(c).

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Interim District Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on February 27, 1955, in Mexico. The applicant claims that his mother, Ms. [REDACTED] was born in Laredo, Texas on September 25, 1928, and that she was a United States citizen. The applicant's father was born in Michoacan, Mexico on August 2, 1920, and he was not a U.S. citizen. The record contains a marriage certificate reflecting that the applicant's parents married on October 10, 1980, fifteen years after the applicant's birth. The applicant seeks a certificate of citizenship under section 309(c) of the former Immigration and Nationality Act (the former Act); 8 U.S.C. § 1409(c), based on the claim that he acquired U.S. citizenship at birth through his mother.

The interim district director found that based on the evidence in the record, the applicant had failed to establish that his mother was a United States citizen, or that she and the applicant's father were unmarried at the time of the applicant's birth. The interim district director concluded that the applicant therefore did not qualify for derivative citizenship under section 309(c) of the former Act, and the application was denied accordingly.

The applicant asserts on appeal that the evidence in the record establishes his mother was born in the United States, and was a U.S. citizen, and that she was unmarried at the time of his birth.

"When there is a claim of citizenship . . . one born abroad is presumed to be an alien and must go forward with evidence to establish his claim to United States citizenship." *Matter of Tijerina-Villarreal*, 13 I&N Dec. 327, 330 (BIA 1969) (citations omitted). Absent discrepancies in the evidence, where a claim of derivative citizenship has reasonable support, it will not be rejected. *See Murphy v. INS*, 54 F.3d 605 (9th Cir. 1995).

"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." *Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1029 (9th Cir., 2000) (citations omitted). The applicant in the present matter claims that he was born out of wedlock, in Mexico in 1955. Section 309(c) of the former Act therefore controls his claim to derivative citizenship. In order to derive citizenship pursuant to section 309(c) of the former Act, the applicant must establish that his mother was an unmarried U.S. citizen at the time of his birth, and that she was continuously present in the U.S. for one year prior to the applicant's birth.

The record contains the following evidence relating to Ms. [REDACTED] U.S. citizenship and her marital status:

A Delayed Certificate of Birth issued to Ms. [REDACTED] by the State of Texas on September 27, 1988, based on an April 1930, Federal Census Record, a Certificate of Baptism from St. Augustine Church in Laredo, Texas, and an aunt's [REDACTED] affidavit written on August 20, 1980.

A U.S. Census Record reflecting that, as of April 1, 1930, [REDACTED] resided with the [REDACTED] family in Webb County, Texas.

A Certificate of Baptism issued by the [REDACTED] in Laredo, Texas, reflecting that [REDACTED] child of [REDACTED] and [REDACTED] born in [REDACTED]

[REDACTED] Tamps., on September 25, 1928, and that she was baptized in Laredo, Texas on December 23, 1928.

A Los Angeles County, California, Certificate of Death stating that Ms. [REDACTED] died on May 29, 1993, and that she was born in Texas and was a U.S. citizen.

A Certificate of Non Record from the Civil Registry of Mexicali, Baja California stating that registry archives between the years 1928 and 2003 contain no birth records for [REDACTED]

A Certification from the Office of Civil Registry of Mexicali, Baja, California, stating that there are no birth records for [REDACTED] during the year 1928.

A Certification from the Office of Civil Registry of the State of Michoacan, stating that there are no birth records for [REDACTED] between 1928 and 1932.

The applicant's Mexican Birth Certificate reflecting that he was born to [REDACTED] and [REDACTED] in Michoacan on February 27, 1955. The birth certificate reflects that the applicant's parents were both Mexican citizens. The birth certificate contains no marital information for the applicant's parents.

A Mexican Birth Certificate reflecting that the applicant's sister, [REDACTED] was born legitimately to the applicant's parents on July 5, 1957. The birth certificate reflects that the applicant's parents were Mexican citizens, and that [REDACTED] was originally from Laredo, Texas. The birth certificate additionally reflects that the applicant's parents were married.

A Mexican Birth Certificate reflecting that the applicant's brother, [REDACTED] was born to the applicant's parents on August 20, 1970, in Mexicali. The birth certificate reflects that the applicant's mother was a U.S. citizen and that she was single.

A Mexican Birth Certificate reflecting that the applicant's brother, [REDACTED] was born to the applicant's parents in Mexicali, on January 5, 1973. The birth certificate reflects that the applicant's parents had Mexican citizenship and were not married.

An affidavit written by [REDACTED] dated May 3, 2000, stating that Ms. [REDACTED] was born in Laredo, Texas on September 25, 1928, and that she resided in Texas between 1928 and 1938.

A Texas marriage certificate reflecting that the applicant's parents married in Hidalgo County on September 9, 1980.

A Mexican Notary Certificate stating that the applicant's father, [REDACTED] was born in Michoacan on August 2, 1920.

A Mexico City, Immigration and Naturalization Service (Service) Report of Investigation stating that there are no records of [REDACTED] birth or marriage to [REDACTED] in Michoacan, Mexico

A Certification from the Office of Civil Registry of the State of Michoacan, stating that there are no marriage records for [REDACTED] between the years 1945 to 1949.

A Certification from the Office of Civil Registry of Mexicali, Baja, California, stating that there are no marriage records for [REDACTED] between the years 1928 and 2003.

A Certificate of Non Record from the Civil Registry of Mexicali, Baja California stating that the archives between the years 1928 and 2003 contain no marriage records for [REDACTED]

The AAO finds that the evidence in the record contains material discrepancies relating to Ms. [REDACTED] place of birth. The AAO notes that the baptismal certificate submitted by the applicant states that M [REDACTED] was born on September 25, 1928 in Nuevo Laredo, Tamaulipas, Mexico. The AAO notes further that the sibling birth certificate information submitted by the applicant contains conflicting information regarding Ms. [REDACTED] citizenship. In addition, the AAO notes that the U.S. Census report submitted by the applicant establishes only that Ms [REDACTED] was physically present in the United States in 1930, two years after her birth. The AAO notes further that the evidence relating to the lack of birth records in the Mexican states of Baja California and Michoacan lacks any probative value as to whether Ms [REDACTED] was born in the state of Tamaulipas, as indicated on her baptismal certificate. Moreover, the AAO finds that the affidavit written by [REDACTED] lacks material detail and is unsupported by corroborative information or evidence relating to Ms [REDACTED] birth in the United States.

Based on the above concerns and discrepancies, the AAO finds that the delayed Texas birth certificate issued to the applicant's mother on September 27, 1988, lacks probative value in the present case. The AAO notes that the birth certificate was issued sixty years after Ms [REDACTED] birth, and that Ms. [REDACTED] baptismal certificate was used as a partial basis for issuing the delayed Texas birth certificate. As noted above, the baptismal certificate contains information that clearly states Ms. [REDACTED] was born in Mexico. The AAO notes further that the remainder of the evidence used to obtain Ms. [REDACTED] delayed birth certificate does not include primary documentation or evidence pertaining to her birth, and does not overcome the discrepancies discussed above.

8 C.F.R. 341.2(c) states that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. The AAO finds that the applicant has failed to establish by a preponderance of the evidence that his mother is a U.S. citizen. Accordingly, the applicant is not eligible for citizenship under section 309(c) of the former Act, and the AAO finds it unnecessary to address the issue of whether Ms. [REDACTED] was unmarried at the time of the applicant's birth. The appeal will be dismissed accordingly.

ORDER: The appeal is dismissed.