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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:



Office: HARLINGEN, TEXAS

Date: **SEP 26 2005**

IN RE:

Applicant:



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

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 be "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Harlingen, Texas, 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 19, 1996 in Mexico. The applicant's mother was also born in Mexico, and she derived U.S. citizenship at birth. The applicant's father is unknown, and the applicant's parents were never married. The applicant entered the United States on or about February 14, 2002 without a lawful admission. The applicant seeks a certificate of citizenship pursuant to § 309(c) of the Immigration and Nationality Act (the Act); 8 U.S.C. § 1409, based on the claim that he is entitled to U.S. citizenship through his mother.

The district director concluded the applicant had failed to establish that his mother resided in the United States continuously for one year prior to the applicant's birth. On appeal, the applicant, through his mother, asserts that his mother resided continuously for at least one year in the United States before the applicant was born. On appeal, the applicant submits three affidavits by neighbors and by his grandfather.

"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 was born in Mexico in 1996; therefore, in order to establish that he derived U.S. citizenship at birth, the applicant must establish that his mother satisfies the physical presence requirement set forth in section 309(c) of the Act.

Section 309(c) of the Act, 8 U.S.C. § 1409, states in pertinent part:

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.

In *Matter of V*, 9 I&N Dec. 558, 560 (BIA 1962), the Board of Immigration Appeals determined that the term "physical presence" meant "continuous physical presence" or "residence" in the United States. In order to meet the physical presence requirements as set forth in § 309(c) of the Act, the applicant must establish that his mother was physically present in the U.S. for a continuous period of one year prior to the applicant's birth on February 19, 1996.

The applicant's N-600 application states that his mother resided in the United States from 1986 until the date of application. The applicant submitted no primary or independent, objective evidence to establish or indicate that his mother was physically present in the United States during the requisite period, however. The applicant has submitted numerous affidavits regarding his mother's presence in the United States prior to his birth, but all the affidavits are vague and do not contain details regarding the dates the applicant's mother was present in this country. The affidavits alone do not establish that the applicant's mother was continuously present in the United States for at least one year prior to the applicant's birth. Moreover, the record contains no school or medical records, or any other documentation that would establish that the applicant's mother was ever in the United States before he was born. The applicant has therefore failed to establish that he qualifies for derivative citizenship under section 309(c) of the Act.

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 applicant has not met his burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.