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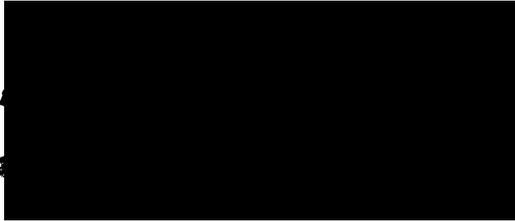
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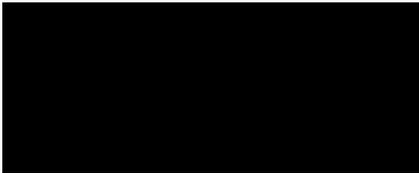


FILE: [REDACTED] Office: HARLINGEN, TX Date: **AUG 28 2006**

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under section 309(c) of the Immigration and Nationality Act, 8 U.S.C. § 1421(c).

ON BEHALF OF APPLICANT:



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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Interim Director, Harlingen, Texas. The matter is now before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The applicant was born on April 11, 1969 in Mexico. The applicant's mother, Maria Aleman Martinez, was born in Texas on August 7, 1933. The applicant's natural parents never married. In that he was born out of wedlock, the applicant seeks a certificate of citizenship based on his mother's nationality under section 309(c) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1421(c).

The interim district director denied the petition because she concluded that the applicant had failed to establish that his U.S. citizen mother met the residency requirements of section 309(c) of the Act, which states:

[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.

The record includes a Texas Department of Health birth certificate that establishes the U.S. citizenship of the applicant's mother. To establish his mother's residence in the United States, the applicant has submitted two affidavits from two women who state they knew his mother when she resided in the United States in 1967. One affidavit is signed by a friend of his mother who states that she came to the United States from Mexico in July 1967 and that the applicant's mother lived with her for two years in Roma, Texas and "never crossed back into Mexico but remained in Roma, Texas, continuously." The second comes from a woman who states that she employed the applicant's mother for several months in 1967. The applicant has also submitted an itemized statement from the Social Security Administration of his mother's earnings in the United States under the name of [REDACTED]. For the year 1967, [REDACTED] reported to have earned \$151.25; for 1968, a total of \$446.35. No subsequent earnings are reported [REDACTED] 1973.

On appeal, the applicant through his counsel contends that his mother was physically present in the United States during the period beginning October 1967 and ending March 1969, but that this residence included brief trips to Mexico of one to two weeks duration. The applicant's assertions are not, however, supported by the record. The affidavit signed by his mother's previous employer establishes only that she employed the applicant's mother for several months during 1967. The statement given by his mother's friend is inconsistent with the applicant's assertions that his mother lived in the United States between October 1967 and March 1969, but periodically traveled back and forth to Mexico. The friend states that, as a result of concerns about her birth certificate, the applicant's mother never left the United States during the two-year period they lived together. It is incumbent on the applicant to resolve any inconsistencies in the record with independent objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). In the instant case, the AAO has found nothing to explain the discrepancies between the applicant's statements and the affidavit provided by his mother's friend. Accordingly, it will not accept the affidavit as proof of the U.S. residence of the applicant's mother during the period 1967-1969. The Social Security earnings documented for Maria Garza during the 1967-1968 period also fail to establish her U.S. residence. The earnings reported are too low to serve as documentation of sustained employment during the 1967-1968 period.

Moreover, the applicant's statements are inconsistent with those made by his mother on November 25, 2003, when she was questioned regarding her U.S. residence from 1967 to 1969. In her denial, the interim director, reported that the applicant's mother had stated under oath that three months after her birth on August 7, 1933, her family returned to Mexico. She returned to the United States in October 1967 to work, but stated that she was again present in Mexico in July 1968 at the time the applicant was conceived and remained there until October 1968 when she again returned to the United States. The applicant's mother traveled to Mexico in March 1969 to give birth to the applicant. Based on this testimony, at no time prior to the applicant's birth did his mother reside in the United States for a continuous period of one year.

On appeal, counsel contends that the applicant's mother states that the above information is not correct and that the testimony she gave on November 25, 2003 regarding her residence in the United States was no different than the information that has been provided by the applicant. Counsel also raises concerns that the applicant's mother was interviewed without his knowledge or consent. While the AAO notes counsel's assertions regarding the "contradictory statements" reported by the interim director, it does not find the record to support his contentions. The record contains no affidavit, statement, letter or other documentation from the applicant's mother related to the testimony she provided in her November 25, 2003 interview and how that testimony differed from that reported by the interim director. Accordingly, the AAO will not consider counsel's claims that the testimony provided by the applicant's mother has been inaccurately reported. Without supporting documentation, the assertions of counsel are not sufficient to meet the applicant's burden of proof in these proceedings. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Moreover, as the interim director's denial indicates that the applicant's mother waived attorney presence at her November 25, 2003 interview, the AAO will not address counsel's concerns related to his lack of knowledge of that interview.

For the reasons discussed above, the evidence of record does not establish that the beneficiary's U.S. citizen mother resided in the United States for one continuous year prior to his birth. Therefore, the applicant has not established that he acquired U.S. citizenship at birth under section 309(c) of the Act, 8 U.S.C. § 1421.

The regulation at 8 C.F.R. § 341.2(c) states that the burden of proof shall be on the applicant to establish the claimed citizenship by a preponderance of the evidence. The applicant has not met his burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.