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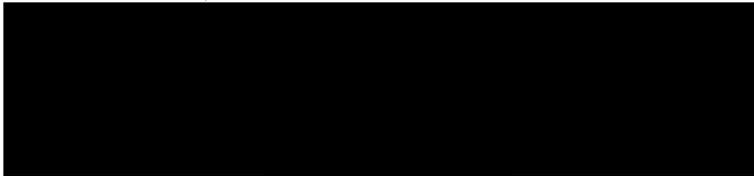
U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:

Office: LOS ANGELES

Date: NOV 30 2006

IN RE:

Applicant



APPLICATION:

Application for Certificate of Citizenship pursuant to Section 301(a)(7) of the former Immigration and Nationality Act; 8 U.S.C. § 1401(a)(7).

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, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Los Angeles, 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 April 26, 1980 in the Philippines. The applicant's mother, [REDACTED] was born on January 4, 1952 in the Philippines, and she became a naturalized U.S. citizen on April 1, 1952. The record does not contain any information regarding the applicant's father, and the records supports that the applicant's mother was not married at the time of the applicant's birth. The applicant seeks a certificate of citizenship pursuant section 309(c) of the Immigration and Nationality Act (the Act); 8 U.S.C. § 1409(c), based on the claim that she acquired U.S. citizenship at birth through her mother.

The district director found that the applicant failed to meet the requirements of section 309(c) of the Act, as she failed to show that her mother was in the United States for one continuous year prior to the applicant's birth. The application was denied accordingly.

On appeal, counsel for the applicant asserts that the applicant's mother was present in the United States for one continuous year prior to the applicant's birth, and thus the applicant derived citizenship through her mother. *Statement from Counsel on Appeal*, dated March 24, 2006. Specifically, counsel asserts that the applicant's mother was a member of the applicant's maternal grandfather's household at a time when he was serving in the U.S. armed forces, and thus such period of time qualifies as time spent in the United States. *Id.* Counsel references the fact that the applicant's sister was recognized as a United States, which serves as evidence that the applicant's mother was present in the United States for a continuous year. *Id.*

The record contains statements from counsel; a copy of the applicant's birth certificate; a copy of the applicant's mother's naturalization certificate, and; a copy of the applicant's sister's certificate of citizenship. The entire record was considered in rendering this decision.

"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 this case was born in the Philippines in 1980. Section 309(c) of the Act thus controls her claim to derivative citizenship.

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

. . . [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 applicant must therefore establish that her mother was continuously present in the United States for one year prior to April 26, 1980, the date of the applicant's birth.

Upon review, the record does not support that the applicant's mother was present in the United States for one continuous year prior to the applicant's birth. The applicant has provided no direct evidence that her mother has been present in the United States. Counsel asserts that the applicant's mother was a member of the applicant's maternal grandfather's household at a time when he was serving in the U.S. armed forces, and

thus such period of time qualifies as time spent in the United States. However, the applicant has not submitted any evidence that her grandfather was a member of the U.S. armed forces, or evidence to show that her mother resided with him at any time. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. 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).

Counsel references the fact that the applicant's sister was issued a certificate of citizenship, and asserts that this reflects that the applicant's mother was present in the United States for one year prior to the applicant's birth. However, the applicant has provided no evidence to show the basis for her sister's certificate of citizenship. It is noted that the applicant's sister was born on November 21, 1985, five years after the applicant. Thus, if the applicant's sister's U.S. citizenship was based on section 309(c) of the Act, she would have had to show that the applicant's mother was continuously present in the United States for one year prior to her birth, November 21, 1985, not the applicant's birth on April 26, 1980. Accordingly, even if the applicant's sister made such a showing, it would not per se establish that the applicant's mother was present in the United States for one continuous year prior to the applicant's birth, as there are five years between the applicant's birth and her sister's birth in which their mother may have been present in the United States.

The regulation at 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. Based on the foregoing, the AAO finds that the applicant failed to establish by a preponderance of the evidence that her mother met the residency requirement of section 309(c) of the Act. For this reason, the application may not be approved and the appeal will be dismissed.¹

ORDER: The appeal is dismissed.

¹ It is noted that the application fails do to a lack of evidence. The record does not affirmatively reflect that the applicant is ineligible for a certificate of citizenship. Thus, the applicant may file a new application with additional evidence if she feels she may meet the requirements of section 309(c) of the Act.