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U.S. Citizenship
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FILE:



Office: CALIFORNIA SERVICE CENTER

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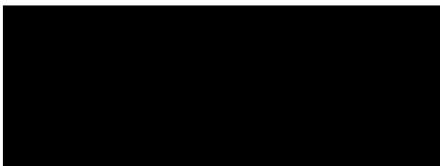
Applicant:



APPLICATION:

Application for Certificate of Citizenship under section 309(c) of the Immigration
and Nationality Act, 8 U.S.C. § 1409(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 Director, California Service Center. The matter is now before the Administrative Appeals Office (AAO). The appeal will be sustained.

The applicant was born on April 20, 1955 in Mexico. The applicant's mother, [REDACTED] was born on March 14, 1919 and was documented as a U.S. citizen by the U.S. Immigration Service, now Citizenship and Immigration Services (CIS), on October 22, 1931. At the time of his birth, the applicant's father, [REDACTED] now deceased, was a citizen of Mexico and the record does not indicate that he subsequently acquired another nationality. 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 director denied the petition because he concluded that the applicant had failed to establish that Ms. [REDACTED] was a U.S. citizen at birth or that she resided in the United States for a period of at least ten years, as required by section 301(a)(7) of the Act, 8 U.S.C. § 1401(a)(7).

On appeal, counsel contends that the applicant is not applying for a certificate of citizenship under section 301(a)(7) of the Act and is, therefore, not required to submit proof that his mother resided in the United States for ten years prior to his birth. Instead, counsel asserts that, as he was born out of wedlock to a U.S. citizen mother who never married his natural father, the applicant need only establish that Ms. [REDACTED] was physically present in the United States for one year prior to his birth. Counsel has correctly identified the section of law that applies to the instant case

Section 309(c) of the Act, 8 U.S.C. § 1409(c) 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.

To establish the U.S. citizenship of Ms. [REDACTED] the applicant has submitted a Citizenship Identification card issued to the applicant's mother by the Inspector in Charge at the San Ysidro, California port of entry, dated October 22, 1931. The AAO finds this document to be sufficient to establish that, at the time of the applicant's birth, his mother was a citizen of the United States.¹

To prove that his parents never married, the applicant has provided his birth certificate, which has been corrected to show that his parents were unmarried at the time of his birth; a July 14, 1998 Certificate of Non-Existence indicating that a search of marriage records in Tijuana, Mexico from 1954 through 1974 has found no record of a marriage between the applicant's parents; and his 1988 marriage certificate on which his mother's name is shown as [REDACTED] While the applicant's birth certificate lists his

¹ The AAO's decision regarding the U.S. citizenship of the applicant's mother is based on the Citizenship Identification card issued to her in 1931. However, it notes that the record also contains certificates of citizenship that have been issued to three of the applicant's siblings, also born to [REDACTED], which document them as having acquired U.S. citizenship at birth. The dates of birth of two siblings predate the applicant's.

parents as married, the AAO notes the correction of that record issued by a Tijuana civil records officer as of April 13, 1998. This formal correction of the applicant's birth record by a Mexican government official, when considered with the Certificate of Non-Existence indicating the absence of any marriage record for the applicant's parents in the Tijuana Civil Registry, and the applicant's marriage certificate listing his mother as [REDACTED] rather than [REDACTED], establishes by a preponderance of the evidence that the applicant's parents did not marry.

As proof of his mother's physical presence in the United States prior to his birth, the applicant has submitted the following: a diploma issued to Ms. [REDACTED] by the Diocese of Los Angeles and San Diego on June 10, 1935 to document her completion of the "Course of Study prescribed for the Grammar Grades;" an identification card issued to Ms. [REDACTED] by the California Department of Employment for unemployment claims, stamped with registration/renewal dates of May 8, 1947 and March 31, 1948; and a listing of Ms. [REDACTED] earnings for the years 1937-1967 provided by the Social Security Administration. Counsel contends that this documentation establishes that Ms. [REDACTED] spent 12 months in the United States prior to the applicant's birth, specifically noting that the wages reported by the Social Security Administration for the applicant's mother between 1937 and 1950, \$10,197, could not have been earned in less than one year "given the relatively low wages paid to unskilled workers in the U.S. in the 40's and 50's."

Section 309(c) of the Act requires the applicant to establish that his mother was physically present in the United States for one continuous year prior to his birth. Therefore, while the earnings reported by the Social Security Administration may indicate that Ms. [REDACTED] cumulatively, spent more than one year in the United States between 1937 and 1950, they do not prove that she was continuously present in the United States for one year during this time period. Neither do the date stamps on the California Department of Employment card, which document only that Ms. [REDACTED] was in the United States on the dates specified.

However, the copy of Ms. [REDACTED]'s grade school diploma does respond to the requirement of section 309(c) of the Act for proof of continuous presence. The diploma documents that prior to 1935 Ms. [REDACTED] was physically present in the United States for the period of time required to complete grammar school. Pursuant to section 309(c) of the Act, an applicant need only establish that his or her mother was physically present in the United States for one continuous year prior to his or her birth. The AAO finds the diploma issued to Ms. [REDACTED] in 1935 to be sufficient proof that she was present in the United States for at least one continuous year prior to April 20, 1955, the date of the applicant's birth. Accordingly, the appeal will be sustained.

For the reasons discussed above, the evidence of record demonstrates that the applicant was born out of wedlock to a U.S. citizen mother who resided in the United States for one continuous year prior to his birth. Therefore, the applicant has established that he acquired U.S. citizenship at birth under section 309(c) of the Act, 8 U.S.C. § 1409(c).

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 met his burden in this proceeding.

ORDER: The appeal is sustained.