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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: [Redacted] Office: LOS ANGELES, CA Date: JAN 07 2008

IN RE: Applicant: [Redacted]

APPLICATION: Application for Certificate of Citizenship under Sections 309(c) of the 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 "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the 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 March 11, 1996 in Mexico. The applicant's birth certificate, issued in 2000, indicates that her parents are [REDACTED] and [REDACTED] S. [REDACTED], the applicant's claimed father, is a lawful permanent resident of the United States. [REDACTED], the applicant's claimed mother, is a native-born U.S. citizen. The applicant's parents were never married to each other. The applicant seeks a certificate of citizenship based on the claim that she acquired U.S. citizenship at birth through her mother.

The district director denied the applicant's citizenship claim upon finding that the applicant had failed to provide requested evidence and did not establish that [REDACTED] was her biological mother. The application was accordingly denied.

On appeal, the applicant's father states that he was unable to provide the requested evidence because of health and economic issues. See *Applicant's Statement on Form I-290B, Notice of Appeal*.

"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 1996. Because the applicant was born out of wedlock, section 309(c) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1409(c), applies to her case.

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

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 other had previously been physically present in the United States or one of its outlying possessions for a continuous period of one year.

The record does not contain any evidence of the applicant's mother physical presence (other than her birth certificate). The AAO therefore finds that the applicant has not met her burden to establish the one year of continuous physical presence in the United States required by section 309(c) of the Act, 8 U.S.C. § 1409(c). Having found that the applicant has not established the required physical presence, the AAO need not determine whether [REDACTED] is the applicant's biological mother.

A person may only obtain citizenship in strict compliance with the statutory requirements imposed by Congress. *INS v. Pangilinan*, 486 U.S. 875, 885 (1988). Even courts may not use their equitable powers to grant citizenship, and any doubts concerning citizenship are to be resolved in favor of the United States. *Id.* at 883-84; see also *United States v. Manzi*, 276 U.S. 463, 467 (1928) (stating that "citizenship is a high privilege, and when doubts exist concerning a grant of it ... they should be resolved in favor of the United States and against the claimant"). Moreover, "it has been universally accepted that the burden is on the alien applicant to show his eligibility for citizenship in every respect." *Berenyi v. District Director, INS*, 385 U.S. 630, 637 (1967).

8 C.F.R. § 341.2(c) provides that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. In order to meet this burden, the applicant must submit relevant, probative and credible evidence to establish that the claim is “probably true” or “more likely than not.” *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989).

Section 309(c) of the Act, 8 U.S.C. § 1409(c), requires that the applicant establish that she was born out-of-wedlock to a U.S. citizen mother who had been physically present in the United States for a continuous period of one year. The AAO concludes that the applicant has failed to meet her burden to establish eligibility for citizenship under this or any other provision of the Act. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.