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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: CHARLOTTE, NC Date: **NOV 26 2008**

IN RE: Applicant: [REDACTED]

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

ON BEHALF OF APPLICANT:

[REDACTED]

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 "John F. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Charlotte, North Carolina, and is before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded to the director for further action consistent with this decision.

The record reflects that the applicant was born on May 7, 2005 in Mexico. She was born, out of wedlock, to [REDACTED], a native-born U.S. citizen. The applicant seeks a certificate of citizenship based on the claim that she acquired U.S. citizenship at birth through her mother.

The field office director denied the application for lack of prosecution, finding that the applicant had failed to appear at her scheduled interview. On appeal, the applicant, through counsel, maintains that she did not receive any interview notices.

“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, out of wedlock, in 2005. Therefore, section 309(c) of the Immigration and Nationality Act (the Act), as amended, is applicable to her case.

Section 309(c) of the Act, 8 U.S.C. §1409(c), states, 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 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 was born out of wedlock to a native-born U.S. citizen. The record contains the applicant’s mother’s school transcript indicating that she had been physically present in the United States starting in October 2005. The applicant was born in May 2005 in Mexico. The record therefore does not establish that the applicant’s mother was physically present in the United States for one continuous year prior to the applicant’s birth.

The matter is remanded to the field office director to request further evidence of the applicant’s mother’s physical presence in the United States and to reschedule the applicant’s interview. The director shall issue a new decision which, if adverse to the applicant, shall be certified to the AAO for review.

ORDER: The matter is remanded to the director for further action consistent with this decision.