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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

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JUN 29 2004

FILE: [redacted] Office: HOUSTON, TX Date:

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship under Section 309 of the Immigration and Nationality Act; 8 U.S.C. § 1409.

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Houston, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant was born out of wedlock o The record reflects that the applicant's was born in the United States on August 29, 1975, and that she is a United States (U.S.) citizen. The applicant's father is not a U.S. citizen. The applicant seeks a certificate of citizenship pursuant to section 309 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1409, based on the claim that she acquired U.S. citizenship at birth through her mother.

The district director concluded the applicant had failed to establish that her mother was physically present in the United States or its outlying possessions for a continuous period of one year prior to the applicant's birth, as required by section 309(c) of the Act. The application was denied accordingly.

On appeal, the applicant, through her mother, asserts that medical vaccination records establish that resided in the U.S. for one year prior to the applicant's birth. No other information or evidence was submitted on 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." 247 F.3d 1026, 1029 (9th Cir. 2000) (citations omitted). The applicant in this case was born out of wedlock in Mexico in 1994. Section 309 of the Act therefore controls her claim to derivative citizenship.

Section 309 of the Act, 8 U.S.C. § 1409, states in pertinent part that:

. . . .

> (c) Notwithstanding the provision of subsection (a) of this section, a person born, after 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.[1]

The AAO finds that the evidence in the record fails to establish that the applicant's mother was physically present in the U.S. or one of its outlying possessions for a continuous period of one year prior to the applicant's birth The medical vaccination record submitted by the applicant reflects that obtained vaccination shots in October and December of 1975, as well as in March 1976, March 1977, April 1978, April 1979, and April 1990. The Doctor/Validation section of the vaccination record indicates, however, that only one set of shots, obtained on April 17, 1990, was given at the CCHD medical center in Texas. According to the information contained on the vaccination record Leon received all of the other shots in Mexico. The AAO therefore finds that the vaccination record evidence submitted by the applicant establishes tha was present in the U.S. on April 17, 1990. The evidence fails, however, to establish tha was physically present in the U.S. for a period of

[1] The AAO notes that although the language contained in section 309(c) states derivative nationality status, Citizenship and Immigration Services (CIS) Interpretations make clear that section 309(c) of the Act allows a child to obtain derivative U.S. citizenship status through a U.S. citizen mother, upon compliance with the section's provisions. *See* CIS Interpretations 309.1(a).

one year prior to the applicant's birth. The AAO additionally finds that while birth certificate establishes that she was born in the U.S. on August 29, 1975, this evidence also does not establish that was physically present in the U.S. for a period of one year prior to the applicant's birth.

The AAO notes that additional evidence submitted by the applicant includes a school enrollment record indicating enrolled at Perkins Intermediate School in eighth grade. The school record contains no attendance, grade or academic progress reports. Nor does it contain any other indication that actually attended Perkins Intermediate School. The AAO notes further that the dates contained in the remaining evidence submitted by the applicant (high school equivalency certificate, employment and tax records, marriage license and younger child's birth certificate) relate to events that occurred after the applicant's birth. The evidence therefore does not establish that was physically present in the U.S. for one year prior to the applicant's birth.

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. The applicant in this case has failed to establish that she meets the requirements for U.S. citizenship under section 309(c) of the Act. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.