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Washington, DC 20536

U.S. Citizenship and Immigration Services

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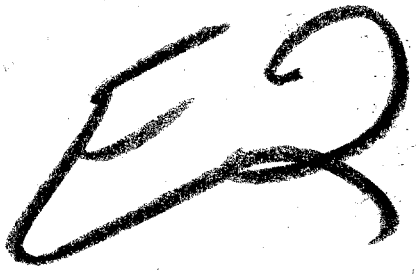

MAY 17 2004

FILE: [redacted] Office: HARLINGEN, TEXAS 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:

[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.

Robert P. Wiemann, Director
Administrative Appeals Office

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

The applicant was born out of wedlock on August 5, 1977, in Tamaulipas, Mexico. The applicant's mother, was born on July 9, 1954, and she claims United States (U.S.) citizenship by birth. The applicant's father was born in Mexico and 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 he acquired U.S. citizenship at birth through his mother.

The district director concluded the applicant had failed to establish that his mother was born in the United States or that his mother was a U.S. citizen. The district director concluded further that the applicant had failed to establish that his mother was physically present in the United States or its outlying possessions for a continuos 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, counsel asserts that the applicant has established, by a preponderance of the evidence, that his mother (Ms. was born in Brownsville, Texas and that his mother was physically present in the U.S. for more than one continuous year prior to the applicant's birth.

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 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.

"When there is a claim of citizenship . . . one born abroad is presumed to be an alien and must go forward with evidence to establish his claim to United States citizenship." *Matter of Tijerina-Villarreal,* 13 I&N Dec. 327, 330 (BIA 1969) (citations omitted).

The record contains the following documents relating to Ms. Perez's place of birth:

> An Immigration and Naturalization Service (Service, now Citizenship and Immigration Services, CIS) request for a record check in Mexico of Ms. birth in Mexico, dated August 10, 1993;
>
> A January 21, 1994, Service memo stating that a Mexican birth record for Ms. was located;
>
> A photocopy of a civil birth record issued on November 10, 1955, in Tamaulipas, Mexico, (Act # 3915) stating that was born in Tamaulipas,

Mexico on July 9, 1954. The birth record is signed by the applicant's father, her mothe is also witnessed by two witnesses;

A Delayed U.S. Birth Certificate issued in Travis County, Texas, on March 1974, stating that s born in Brownsville, Texas on July 9, 1954. The certificate was issued based on an affidavit from M other, a March 1955, baptismal record for the applicant from the Immaculate Conception Church, and an August 1961, Mexican school record f

An August 24, 1990, affidavit written by stating that she was present when Ms was born in Brownsville, Texas. The AAO notes that the Service requested tha estify personally at an interview about her personal knowledge of Ms. birth. declined the request, apparently due to health and age reasons;

A November 17, 1993, affidavit by stating that although he does not personally remember rth, he heard, and has always known that she was born in Brownsville, Texas.

The Mexican birth certificates of the applicant's siblings stating that their mother, has North American nationality;

The U.S. baptismal records for Ms. siblings, stating that they were born in Brownsville, Texas;

The Board of Immigration Appeals (Board) stated in *Matter of E-M-*, 20 I&N Dec. 77, 80 (BIA 1989) that:

> [W]hen something is to be established by a preponderance of the evidence it is sufficient that the proof only establish that it is probably true.
>
> Truth is to be determined not by the quantity of evidence alone, but by its quality. The regulations specifically state that the evidence will be judged by its probative value and credibility. Therefore, the application of the "preponderance of the evidence" standard may require the examination of each piece of relevant evidence and a determination as to whether such evidence, either by itself or when viewed within the totality of the evidence, establishes that something to be proved is probably true.

(Citations omitted). The AAO finds that the evidence in the present record fails to establish that the applicant's mother, Ms. was born in the United States or that she is a U.S. citizen. The record contains a copy of a civil birth record issued on November 10, 1955, in Tamaulipas, Mexico, (Act # 3915) stating that the applicant's mother, was born in Tamaulipas, Mexico on July 9, 1954. The Mexican birth record is witnessed and is signed by the applicant's father, Herminio Perez and her mother, Moreover, the authenticity of the document is not challenged. The AAO finds that the Mexican birth record for Ms prima facie evidence that she was born in Mexico, and not in the United States as the applicant claims.

The AAO finds further that the remaining evidence submitted to support the applicant's claim regarding his mother's U.S. citizenship, fails to establish that Ms was born in the United States. The AAO notes that the delayed U.S. birth certificate that was issued to Ms. 1974, was not based on official State records regarding M birth. Rather, it was issued based on secondary evidence including an affidavit from Ms mother, a March 1955, baptismal record for the applicant from the Immaculate Conception Church which indicated that the applicant had been born in the U.S. eight months earlier, and an August 1961, Mexican school record which indicated that Ms. as born in Brownsville, Texas. The AAO notes that the affidavit by Ms mother is in direct conflict with the witnessed, Mexican birth certificate that contains her signature and states that was born in Tamaulipas, Mexico. The AAO notes further that neither the baptismal nor the Mexican school record claims regarding Ms. birth in the U.S. were corroborated by any independent information or documentation about Ms birthplace. Accordingly, the AAO finds that M elayed U.S. birth certificate has no probative value in the present case.

The AAO additionally finds that the birth certificates of the applicant's siblings, which state that their mother, Ms. North American, lack probative value in the present case. The AAO notes that Ms. may well have indicated to birth record authorities that she was born in the United States. The record contains no direct evidence to corroborate this fact, however, and the record fails to establish that Ms nationality was officially verified or examined for purposes of her children's birth certificates.

The affidavits submitted by the applicant also fail to establish that Ms. was born in the United States. Mr. mits in his affidavit that he has no personal knowledge of Ms birth, and the record reflects that he did not meet Ms. Perez until she was one month old. Moreover, the AAO finds tha affidavit is uncorroborated by independent evidence and lacks material details and information regarding her personal knowledge of Ms. birth. The AAO notes further tha asked to personally testify and clarify the contents of her affidavit, but that she declined to do so.

The AAO finds that the evidence in the present case, when viewed in its totality, fails to establish by a preponderance of the evidence that the applicant's mother was born in the United States or that she is a U.S. citizen. Because the applicant has failed to establish that Ms is a U.S. citizen, the AAO finds it unnecessary to determine whether Ms. et the one-year physical presence requirements set forth in section 309(c) of the Act.

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 his mother was a U.S. citizen at the time of his birth, as required by section 309(c) of the Act. The appeal will be dismissed accordingly.

ORDER: The appeal is dismissed.