identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

PUBLIC COPY

U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

E2

FILE: [redacted] Office: PHOENIX (TUCSON) AZ Date: JAN 10 2005

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship pursuant to Section 309(c) of the former Immigration and Nationality 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Phoenix, Arizona, 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 June 25, 1958, in Mexico. The applicant claims that her Ms was born in Arizona on December 2, 1938, and that she is a United States citizen. The applicant's father was born in Mexico and he is not a U.S. citizen. The record reflects that the applicant's parents were married on June 13, 1963, after the applicant's birth. The applicant presently seeks a certificate of citizenship pursuant to section 309(c) of the former Immigration and Nationality Act (the former Act); 8 U.S.C. § 1409(c), based on the claim that she acquired U.S. citizenship at birth through her mother.

The district director found that, based on the evidence in the record, the applicant had failed to establish her mother was born in the United States or that her mother was a United States citizen. The district director concluded that the applicant did not qualify for derivative citizenship under section 309(c) of the former Act, and the application was denied.

On appeal, counsel asserts that the conclusion regarding Ms citizenship status was based on speculation and unsubstantiated evidence, and that the affidavit and documentary evidence contained in the record establish that Ms. was born in the United States and is a U.S. citizen.

"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). Absent discrepancies in the evidence, where a claim of derivative citizenship has reasonable support, it will not be rejected. *See Murphy v. INS,* 54 F.3d 605 (9th Cir. 1995).

"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 Mexico in 1958. Section 309(c) of the former Act therefore controls her claim to derivative citizenship. In order to derive citizenship pursuant to section 309(c) of the former Act, the applicant must establish that Ms. Berrelles was a U.S. citizen prior to the applicant's birth and that Ms. Berrelles was continuously present in the U.S. for one year prior to the applicant's birth.

The record contains the following evidence relating to Ms. Berrelles' U.S. citizenship:

> A Mexican Registration of Birth, dated March 15, 1939, reflecting tha registered the December 2, 1938, birth of his daughte at home in Mexico. The registration of birth reflects that the parents and were both Mexican nationals, and that they lived a Sonora, Mexico. The child's maternal grandparents are listed as and and the paternal grandparents are and In addition, the registration of birth reflects that residing o Mexico, an residing o Mexico, witnessed the child's birth, and the registration of birth is signed b and the witnesses.

A Mexican Registration of Birth, dated May 25, 1998, reflecting that registered the December 2, 1938, birth of his daughter, in Noria, Arizona. The registration of birth reflects that the paren and were both Mexican nationals living at Mexico. The child's maternal grandparents are listed as and and the paternal grandparents are and The registration of birth additionally reflects that the witnesses to the registration were residing on and residing o Mexico.

An Arizona State Delayed Certificate of Birth dated July 14, 1982, reflecting tha was born in Noria, Arizona on December 2, 1938, to of Mexico, an of Arizona. The delayed birth certificate was issued on the basis of place of birth information contained on 1) a baptismal record from a church in Mexico, 2) Ms Mexican Registration of Birth, 3) Ms school records in Mexico, and 4) an affidavit written by Ms mother.

A letter from Dr signed on October 21, 1981, certifying that he attended the birth of Mrs daughter on December 2, 1938 in Arizona. The letter reflects that Dr s a surgeon and obstetrician in Mexico with a medical clinic at Calle Hidalgo in Mexico.

An Affidavit of Facts of Birth signed by on August 23, 1982, certifying that he was the attending physician at the birth of on December 2, 1938, Arizona.

The AAO finds that the evidence in the record contains material discrepancies relating to Ms place of birth. The AAO notes that, although the two Mexican birth registration certificates contained in the record contain different names and places of birth for the child born in Mexico, and born in the United States), the birth date and biographical information pertaining to the child's parents, maternal and paternal grandparents, as well as to the witnesses is identical. Moreover, the AAO notes that the earlier registration of birth, dated March 15, 1939, occurred about three months after the child's birth in Mexico and was signed by Ms. father and two witnesses. The AAO therefore finds that the earlier registration of birth is more reliable evidence than the later registration of birth, dated May 25, 1998, which occurred about sixty years after the child's birth, and is not signed by Ms. father or by the witnesses.

The AAO finds further that given the above circumstances, the delayed Arizona birth certificate issued to the applicant's mother on July 14, 1982, has no probative value in the present case. The AAO notes that the birth certificate was issued forty-three years after Ms. birth, and that the Mexican registration of birth was used as a partial basis for issuing the delayed Arizona birth certificate. As noted above, the evidence in the record reflects that another Mexican registration of birth exists which contains place of birth information that materially conflicts with the Arizona place of birth information relied upon by Arizona Office of Vital Records. Moreover, the AAO notes that the remainder of the evidence used to obtain the delayed birth certificate does not include primary documentation or evidence pertaining to her birth, and does not overcome the discrepancies contained in the Mexican birth registration certificates. The AAO finds further that Dr.

letter and affidavit of birth also lack probative value as to Ms. place of birth. The AAO notes that the documents were written more than forty years after Ms. birth, and the information contained in the documents lacks material detail and is unsupported by corroborative medical records or other evidence.

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. Based on the concerns noted above, the AAO finds that the applicant failed to establish by a preponderance of the evidence that her mother is a U.S. citizen. Accordingly, the applicant is not eligible for citizenship under section 309(c) of the former Act, and the appeal will be dismissed accordingly.

ORDER: The appeal is dismissed.