



U.S. Citizenship  
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Services

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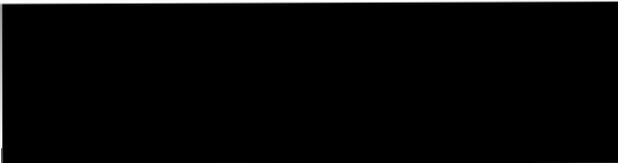
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FILE:  OFFICE: ATLANTA, GA DATE: MAY 12 2006

IN RE: APPLICANT: 

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:



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, Atlanta, Georgia. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born in Mexico on August 14, 1967, to unwed parents. The applicant's mother [REDACTED] was born in California on February 2, 1930, and she is a U.S. citizen. The applicant's father was born in Mexico and is not a U.S. citizen. The record reflects that the applicant's parents married on April 15, 1977, when the applicant was nine years old. The applicant seeks a Certificate of Citizenship pursuant to section 309(c) of the Immigration and Nationality Act (the 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 the applicant had failed to submit evidence to establish that her mother was continuously present in the United States for a period of one year prior to the applicant's birth, as required by section 309(c) of the Act. The district director found further that the applicant did not meet the requirements for citizenship under section 320 of the Act, 8 U.S.C. § 1431.<sup>1</sup> The application was denied accordingly.

On appeal, counsel does not dispute the district director's finding that the applicant does not qualify for citizenship under section 320 of the Act. Counsel asserts, however, that the applicant does qualify for citizenship under section 309(c) of the Act, and counsel asserts that the district director improperly failed to consider submitted evidence of the applicant's mother's [REDACTED] continuous physical presence in the United States.

Section 309(c) of the Act provides in pertinent part that:

[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.

8 C.F.R. 341.2(c) states that the burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. Under the preponderance of evidence standard, it is generally sufficient that the proof establish that something is probably true. *Matter of E-M-*, 20 I&N Dec. 77 (Comm. 1989).

The evidence relating to [REDACTED] physical presence in the U.S. prior to the applicant's birth consists of the following:

A California birth certificate reflecting that [REDACTED] was born in Montebello,

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<sup>1</sup> Section 320 of the Act permits a child born outside of the U.S. to automatically become a citizen of the United States upon fulfillment of the following conditions:

- (1) At least one parent of the child is a citizen of the United States, whether by birth or naturalization.
- (2) The child is under the age of eighteen years.
- (3) The child is residing in the United States in the legal and physical custody of the citizen parent pursuant to a lawful admission for permanent residence.

California on February 2, 1930, and that her parents resided in Montebello, California at the time of her birth.

A September 9, 2002, affidavit signed by [REDACTED], stating that she is Ms. [REDACTED] sister, and that she has personal knowledge that [REDACTED] lived continuously in Seimont and San Jose, California from the time of her birth until 1934.

A September 10, 2002, affidavit signed by [REDACTED] stating that he has personal knowledge that his sister-in-law [REDACTED] lived continuously in Seimont, Montebello and other parts of California from the time of her birth until 1934.

A September 10, 2002, affidavit signed by [REDACTED] stating that [REDACTED] is a good friend and that he has personal knowledge that [REDACTED] lived continuously in California from the time of her birth until 1934.

**The AAO finds that** [REDACTED] birth certificate establishes by a preponderance of the evidence that she was born in Montebello, California in February 1930, and that her parents resided in California at the time of her birth. The birth certificate does not, however, establish whether [REDACTED] continued to reside in California after her birth, or how long [REDACTED] resided in California after her birth. The AAO finds further that the affidavits submitted by the applicant lack material detail, source of knowledge and corroborative evidence. The affidavits therefore lack probative value regarding [REDACTED] physical presence in the United States prior to the applicant's birth. Accordingly, the AAO finds that the cumulative evidence in the record fails to establish by a preponderance of the evidence, that the applicant's mother was physically present in the United States for a continuous period of one year prior to the applicant's birth. The applicant has therefore failed to establish that she meets the requirements for citizenship under 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 his or her claimed citizenship by a preponderance of the evidence. The applicant has failed to meet her burden in the present matter and the appeal will be dismissed.

**ORDER:** The appeal is dismissed.