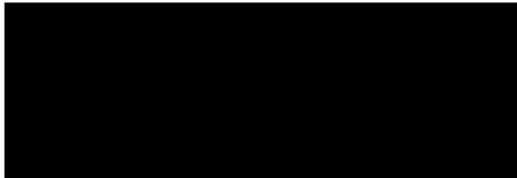




U.S. Citizenship
and Immigration
Services

E2



FILE:

Office: EL PASO, TX

Date:

DEC 08 2009

IN RE:

Applicant:



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

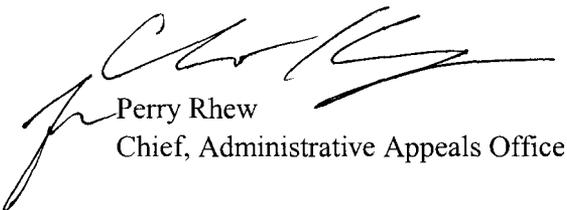
ON BEHALF OF APPLICANT:



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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).



Perry Rhew
Chief, Administrative Appeals Office

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

The record reflects that that the applicant was born on April 6, 1965 in Mexico. The applicant birth certificate indicates that the applicant's parents are [REDACTED] and [REDACTED]. The applicant's mother was a native-born U.S. citizen, born on April 7, 1929. The applicant's parents were never married to each other. The applicant seeks a certificate of citizenship based on the claim that he acquired U.S. citizenship at birth through his mother.

The field office director denied the application finding that the applicant was a resident of Mexico, and therefore outside the jurisdiction of U.S. Citizenship and Immigration Services (USCIS). On appeal, the applicant, through counsel, maintains that his residence is in Texas. *See* Applicant's Statement on Form I-290B, Notice of Appeal, and accompanying brief. The applicant further claims that he has been prevented from returning from Mexico to his residence in the United States. *Id.*

"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 in 1965. Because the applicant was born out of wedlock, section 309(c) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1409(c), applies to his case.

Section 309(c) of the Act, 8 U.S.C. § 1409(c), provides, 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.

At the outset, the AAO must determine whether USCIS has jurisdiction over the applicant's citizenship claim. The record establishes that that applicant is currently in Mexico. Residence is defined in section 101(a)(33) of the Act, 8 U.S.C. § 1101(a)(33), as "the place of general abode . . . the principal, actual dwelling place in fact, without regard to intent." Under this definition, the applicant is residing in Mexico.

Pursuant to section 104(a)(3) of the Act, 8 U.S.C. § 1104(a)(3), the Secretary of State is charged with "the determination of nationality of a person not in the United States." 8 U.S.C. § 1104(a)(3); *see also* 22 C.F.R. § 50. Regardless of the reason why a person is currently residing outside the United States, unless specifically provided otherwise, their nationality claim must be determined by the Secretary of State. USCIS is without jurisdiction to determine the matter. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.