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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED] Office: HOUSTON, TEXAS

Date: JUL 01 2010

IN RE: [REDACTED]

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 PETITIONER:

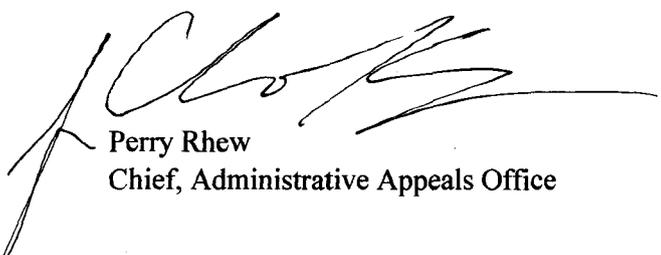
[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Application for Certificate of Citizenship (Form N-600) 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 record reflects that the applicant was born in Mexico on April 11, 1969, to [REDACTED] a native and citizen of the United States. The applicant's birth father is not noted on his birth certificate, and the applicant's parents were not married at the time of his birth. 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 he acquired U.S. citizenship at birth through his mother.

The applicant previously filed a Form N-600 on July 13, 1996, which was denied on December 4, 2003. The AAO dismissed a subsequent appeal on August 28, 2006. The applicant filed another Form N-600 on June 5, 2008. The regulation at 8 C.F.R. § 341.6 prescribes that after an application for a certificate of citizenship has been denied and the appeal time has run, a second application submitted by the same individual shall be rejected and the applicant be instructed to file a motion to reopen or reconsider the denial of the first application. In this case, the director appears to have treated the applicant's second Form N-600 as a motion to reopen and reconsider. Accordingly, the record in this case includes the prior Form N-600 application and related documents, as well as the 2003 denial of the application and the AAO's 2006 dismissal of the appeal.

The District Director, Houston, Texas, found that the applicant failed to establish that his mother satisfied the continuous physical presence requirement set forth in section 309(c) of the Act. *See Decision of the Director*, dated May 21, 2009. On appeal, the applicant contends through counsel that his mother satisfies the physical presence requirement based on her continuous presence in the United States before his birth. *See Form I-290B, Notice of Appeal*, filed June 23, 2009; *Brief on Appeal* at 3.

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. *See Chau v. INS*, 247 F.3d 1026, 1028 n.3 (9th Cir. 2001). Because the applicant was born out of wedlock, section 309(c) of the Act, as in effect at the time of his birth in 1969, applies to his case.

Section 309(c) of the Act, 8 U.S.C. § 1409(c) (1969) provided, in relevant part:

a person born, on or after [December 23, 1952], outside the United States 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.

Accordingly, the applicant must establish that his mother was physically present in the United States for a continuous period of one year before his birth on April 11, 1969.

The applicant now contends that his mother has been continuously present in the United States since her birth on August 7, 1933, to the present. *See Form N-600*, filed June 5, 2008. [REDACTED] states that she has "been working all [her] life in the fields and farms of the United States" until her retirement. *Affidavit of* [REDACTED] dated Mar. 12, 2008. [REDACTED] further states that she worked in Roma, Texas, as a housekeeper and farmworker, from May, 1967, until March, 1969, when she returned to Mexico to give birth to the applicant. *Id.* Additionally, [REDACTED] brother claims that he worked in the fields with [REDACTED] for most of his life, that they began working the fields in Roma, Texas, in January 1968, and that they were paid in cash for work performed. *See Affidavit of* [REDACTED] dated Mar, 25, 2008.

The AAO dismissed the applicant's previous appeal because of conflicting evidence in the record regarding his mother's physical presence in the United States and because the applicant failed to resolve the inconsistencies in the record with independent and objective evidence. *See August 28, 2006 Decision of the AAO* (discussing the multiple inconsistencies in the evidence). The applicant's newly-submitted documentation does not resolve the inconsistencies in the record, and provides yet another conflicting account of his mother's physical presence in the United States *Cf., e.g., Form N-600*, filed June 5, 2008 (claiming residence in the United States from August 7, 1933, to the present); *Form N-600*, filed July 13, 1996 (claiming residence in the United States from "birth to 1933" and from "1967 to present"); *Form N-600*, filed Jan. 15, 1976 (claiming residence in the United States from 1966 to 1968).

The applicant's current claim that his mother has been continuously present in the United States since 1933 conflicts with the testimony she provided during the applicant's interview that she moved to Mexico with her family on August 7, 1933, three months after her birth, and that she returned to the United States to work in October, 1967. Additionally, the applicant's mother stated that she was in Mexico in July, 1968, when the applicant was conceived, and that she remained in Mexico until October, 1968. *See August 28, 2006 Decision of the AAO; Decision of the Interim Director*, dated Dec. 4, 2003. The record also contains a signed statement from the applicant's mother indicating that she came to the United States in 1967, and that she "used [t]o work for a period of 6-8 months then [she would] return to Mexico to [m]eet with [her] family [until] 1974 [when she] decided to stay in the United States [p]ermanently." *Statement of* [REDACTED] undated; *see also Brief in Support of Appeal*, dated Jan. 2, 2004 (containing contention of previous counsel that the applicant's mother was in the United States from October, 1967, to March, 1969, and that she traveled to Mexico several times during that period to see her children); *cf. Affidavit of* [REDACTED] (stating that the applicant's mother began living with her in Texas in 1967, and that "during that two years she never crossed back into Mexico but remained in Roma, Texas, continuously.").

It is incumbent on the applicant to resolve any inconsistencies in the record. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). However, rather than attempting to resolve these inconsistencies, counsel on appeal simply denies that there are any discrepancies in the record. *See Brief on Appeal* at 4. Additionally, counsel stated that he would submit additional evidence from the Social Security office to establish the applicant's mother's continuous presence in the United States. *Id.* at 3.

However, the only document submitted is a partial, illegible copy of a letter that does not include any additional information regarding the applicant's mother's earnings in the United States.

The applicant bears the burden of proof to establish the claimed citizenship by a preponderance of the evidence. Section 341 of the Act, 8 U.S.C. § 1452; 8 C.F.R. § 341.2(c). The applicant has failed to establish by a preponderance of the evidence that his mother was continuously physically present in the United States for the requisite period prior to his birth. Accordingly, the applicant is not eligible for citizenship under section 309(c) of the Act, as in effect at the time of his birth, and the appeal will be dismissed.

ORDER: The appeal is dismissed.