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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship
and Immigration
Services

E2

[redacted]

Date: AUG 0 2 2012 Office: ORLANDO, FL File: [redacted]

IN RE: Applicant: [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 APPLICANT:

[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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630, or a request for a fee waiver. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. ***Do not file any motion directly with the AAO.*** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 was denied by the Field Office Director, Orlando, Florida, 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 July 7, 1968 in Greece. The applicant's mother, [redacted], was born in the United States on September 30, 1947. The applicant's parents were not married to each other. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship at birth through his mother.

The field office director found that the applicant did not acquire U.S. citizenship at birth under section 309(c) of the Act, 8 U.S.C. § 1409(c), because he could not establish that his mother was physically present in the United States for a continuous period of one year prior to the applicant's birth. *See Director's Decision*, dated Nov. 30, 2011.

The applicant, through counsel, maintains in a brief in support of his appeal that his mother was present in the United States from birth until 1949. In support of his claim, the applicant cites to written statements provided by his mother and his maternal aunt. Counsel explains that efforts to obtain documentary evidence of the applicant's mother's presence in the United States did not yield any results.

The AAO reviews these proceedings *de novo*. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). 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. Immigration and Naturalization Service*, 247 F.3d 1026, 1028 n.3 (9th Cir. 2001) (internal citation omitted). The applicant in the present matter was born in 1968. Because he was born out of wedlock, section 309(c) of the Act 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 other had previously been physically present in the United States or one of its outlying possessions for a continuous period of one year.

The applicant's mother's birth certificate is the only objective, documentary evidence of her physical presence in the United States. The applicant's mother and her sister (the applicant's maternal aunt) indicate in their written statements that their family resided in Philadelphia, Pennsylvania until 1949. The applicant's maternal aunt was born in Greece in 1953, and has no personal knowledge of the applicant's mother's residence between 1947 and 1949. The AAO notes counsel's explanation regarding his efforts to obtain certain documentary evidence of the applicant's mother's presence in the United States during the first two years of her life. Nevertheless, counsel failed to explain the unavailability of other evidence such as

census records, birth certificates of the applicant's other siblings, or written statements executed by uninterested witnesses with personal knowledge of the applicant's parents' residence in Philadelphia. The applicant cannot establish that it is more likely than not that his mother was physically present in the United States for a continuous period of one year during her first two years of life on the basis of her and her younger sister's statements alone.

The Board of Immigration Appeals held in *Matter of Tijerina-Villarreal,* 13 I&N Dec. 327, 331 (BIA 1969), that:

> [W]here a claim of derivative citizenship has reasonable support, it cannot be rejected arbitrarily. However, when good reasons appear for rejecting such a claim such as the interest of witnesses and important discrepancies, then the special inquiry officer need not accept the evidence proffered by the claimant. (Citations omitted.)

The burden in these proceedings is on the applicant to establish eligibility for U.S. citizenship by a preponderance of the evidence. Section 341 of the Act, 8 U.S.C. § 1452; 8 CFR § 341.2. The applicant in this case has failed to meet his burden of proof. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.