



U.S. Citizenship
and Immigration
Services

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FILE:



Office: HARLINGEN, TEXAS

Date: OCT 21 2005

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:

SELF-REPRESENTED

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.

Handwritten signature of Robert P. Wiemann.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Harlingen, 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 September 27, 1974. The applicant's mother, [REDACTED] was born in Los Indios, Texas on January 13, 1951, and she is a U.S. citizen. The record reflects that the applicant's parents did not marry. The applicant claims that his father, [REDACTED] was born in Texas on June 8, 1924, and that he was a U.S. citizen. The record contains no evidence of the applicant's father's U.S. citizenship. The record also contains no evidence relating to the applicant's father's physical presence in the United States, or regarding whether his father legitimated him, and the applicant does not seek citizenship pursuant to the claim that both of his parents were U.S. citizens.¹ Instead, the applicant 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 he derived U.S. citizenship at birth through his mother.

The district director found that the applicant had failed to establish his mother [REDACTED] met the U.S. continuous physical presence requirements set forth in section 309(c) of the former Act. The application was denied accordingly.

On appeal, the applicant asserts that the evidence submitted establishes he qualifies for U.S. citizenship through his mother.

“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 record reflects that the applicant was born out-of-wedlock in Mexico in 1972. Section 309(c) of the former Act therefore controls his claim to derivative citizenship.

Section 309(c) of the Act states 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 the 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:

¹ Section 301(a)(4) of the former Immigration and Nationality Act, 8 U.S.C. § 1410(a)(4) provides that a person is a U.S. citizen at birth if the person was “[b]orn outside of the United States and its outlying possession of parents both of whom are citizens of the United States and one of whom has had a residence in the United States or one of its outlying possessions, prior to the birth of such person”.

A Texas birth certificate reflecting that [REDACTED] was born in Los Indios, Texas on January 13, 1951.

An undated statement signed by [REDACTED] stating in pertinent part that she has no rent receipt proof of her physical presence in Mission, Texas since 1970, because the applicant's father, now deceased, paid the rent and kept the receipts. [REDACTED] states that her physical presence in Mission, Texas since 1970 can, however, be verified by witnesses.

A September 18, 1997 affidavit signed by [REDACTED] stating that she has known [REDACTED] be living in the United States since 1969. The affiant states that she met [REDACTED] at a tortilla factory where [REDACTED] worked and that she and [REDACTED] are close friends.

A September 18, 1997 affidavit signed by [REDACTED] stating that he has known [REDACTED] since 1970, and that he knows she has lived in the United States since 1968. The affiant states that [REDACTED] is his daughter's best friend and that she is a close friend of his as well.

A September 18, 1997 affidavit signed by [REDACTED] stating that he has known [REDACTED] be living in the United States since 1968. The affiant states that [REDACTED] worked with him in the fields and that they became close friends.²

The AAO finds that the Texas birth certificate contained in the record establishes by a preponderance of the evidence that [REDACTED] was born in Los Indios, Texas on January 13, 1951, and that she was physically present in the U.S. on that date. The record contains no evidence to establish that [REDACTED] was physically present in the U.S. at any other time in 1951, however, and the applicant makes no such assertion on appeal or in his Form N-600, Application for Certificate of Citizenship. Moreover, the AAO notes that [REDACTED] birth certificate does not list a street address or exact U.S. residence. The AAO notes further that Los Indios, Texas is located directly on the U.S. border with Mexico.

The AAO finds further that the affidavits submitted by the applicant lack probative value as to Ms. [REDACTED] physical presence in the U.S. subsequent to 1968 and prior to the applicant's birth. The AAO notes that the affidavits and statements contain contradictory information regarding the year that Ms. [REDACTED] began living in the United States. In addition, the affidavits are unsupported by corroborative information or evidence, and they lack material detail regarding the affiant's source of knowledge and regarding the specific dates and locations of [REDACTED] physical presence in the United States.

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 AAO finds that the applicant has failed to establish by a preponderance of the evidence that his mother was physically present in the U.S. for a continuous one-year period prior to the applicant's birth. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.

² It is noted that the remaining evidence contained in the record relates to the [REDACTED] physical presence in the United States subsequent to the applicant's birth.