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U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE:

[REDACTED]

OFFICE: SAN FRANCISCO (SACRAMENTO)

Date: JAN 26 2007

IN RE:

APPLICANT:

[REDACTED]

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

ON BEHALF OF APPLICANT:

[REDACTED]

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.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the District Director, San Francisco, California. 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 April 1, 1972. The applicant's mother, [REDACTED] was born in Texas on November 15, 1948, and she is a U.S. citizen. The record does not reflect, and the applicant does not assert, that his father was a U.S. citizen. The applicant's parents did not marry. The applicant seeks a certificate of citizenship 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 that his 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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1409(c). The application was denied accordingly.

On appeal, counsel contends that the record contains sufficient evidence and testimony to show that the applicant's mother resided in the United States for at least one year prior to the applicant's birth, and thus the application should be approved. *Brief in Support of Appeal*, dated January 13, 2006.

The record contains, in pertinent part: a brief from counsel, statements from the applicant's mother and the applicant's mother's stepmother; copies of the applicant's and his mother's birth certificates, and; sworn testimony from the applicant's mother taken by an immigration officer in connection with the present proceeding. The entire record was reviewed in rendering this decision.

"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 (9<sup>th</sup> Cir. 2000) (citations omitted). The record reflects that the applicant was born out of wedlock on April 1, 1972. Section 309 of the Act therefore applies to his citizenship claim.

Section 309 of the Act, entitled, "Children Born Out of Wedlock" states in pertinent part that:

(c) [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.

In the present matter, the applicant's mother contends that she was born in the United States, where she resided until she was 19 years old. *Affidavit from Applicant's Mother*, dated December 15, 2004. She stated that she moved to Mexico in January or February 1968, and she did not return to the United States until after the applicant's birth. *Id.* In a separate statement, the stepmother of the applicant's mother provided that she met the applicant's mother in 1964, as the applicant's mother came to live with her and the applicant's grandfather at [REDACTED] *Statement from Applicant's Mother's Stepmother*, dated October 31, 1998. The stepmother of the applicant's mother stated that the applicant's mother resided with her as a member of her household until 1968, at such time that the applicant's mother left to "start her adult life." *Id.*

The applicant's mother's birth certificate states that she was born on November 15, 1948 in El Paso, Texas. It further reflects that the applicant's mother's mother was born in El Paso, her father was born in Arizona, and her parents were residents of El Paso at the time of her birth. The applicant's birth record reflects that his

mother's parents were living in Sacramento, California as of July 12, 1977.

On May 27, 2005, the applicant's mother provided sworn testimony before a Citizenship and Immigration Services (CIS) officer. As evidence to support the statements in her affidavit, she provided that she submitted her birth certificate and made statements to immigration officers. *Sworn Statement from Applicant's Mother*, dated May 27, 2005. She further stated that she has four siblings from the same mother and father, that one of her younger siblings was born in El Paso, Texas, and that another of her younger siblings was born in Mesa, Arizona. *Id.* She indicated that her youngest sibling was born in Ciudad Juarez, Mexico. *Id.*

Upon review, the applicant has not provided sufficient evidence and testimony to show that his mother was continuously present in the United States for at least one year prior to his birth, as required by section 309 of the Act. The affidavits provided from the applicant's mother and aunt are brief and lack adequate detail to establish the applicant's mother's continuous presence in the United States. For example, the applicant's mother stated that she resided in the United States from birth until she was 19 years old, yet she did not indicate where or with whom she resided. She did not provide details regarding her activities during that time period, such as whether and where she attended school, and whether and where she worked. As noted by the district director, the record contains no independent documentation to reflect these details, such as school or employment records, or other evidence of the applicant's mother's address.

The applicant's mother's stepmother stated that the applicant's mother resided with her in the United States for approximately four years, from 1964 to 1968. However, her affidavit lacks specific detail to support that the applicant resided in her household. For example, she did not describe any of the applicant's mother's activities during that time period, such as whether she attended school or worked, how she spent her free time, or who else resided in the household and how they interacted with the applicant's mother.

The applicant's mother was born in the United States, at a time when her parents were U.S. citizens residing in the United States. She testified under oath that two of her siblings were born after her in the United States. Such fact potentially serves as circumstantial evidence to show that the applicant's mother and her family remained in the United States for at least one year after her birth. However, the applicant's mother has not provided the birth certificates of her siblings to show that they in fact were born in the United States. Nor has she explained whether she resided with her family at the time that they were born.

In the absence of independent documentation, affidavits and testimony may serve as sufficient evidence to establish a fact. Testimony alone, if detailed and consistent, may meet an applicant's burden to show a fact by a preponderance. However, the affidavits from the applicant's mother and the applicant's mother's stepmother are brief and lack adequate detail to show that the applicant's mother resided in the United States for a continuous year prior to the applicant's birth.

The applicant's mother was asked if she possessed evidence in addition to the aforementioned affidavits to support that she resided in the United States for one year prior to the applicant's birth. She referenced her birth certificate and prior statements to CIS investigators, yet she did not claim to hold additional probative documentation. The applicant's mother did not explain why additional documentation is unavailable. It is assumed that the applicant could obtain evidence such as his mother's elementary school records, documentation in connection with his mother's employment such as a social security withholding summary or tax records, birth certificates from his mother's U.S.-born siblings, and/or detailed affidavits from other family members or acquaintances who have a direct knowledge of his mother's presence in the United States between her birth and the applicant's birth. In the absence of such documentation, the affidavits in the record do not show that the applicant's mother met the residency requirement of section 309 of the Act.

It is noted that counsel provided additional explanation of the applicant's mother's presence and activities in the United States, such as the fact that she did not attend high school. However, without documentary

evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Counsel indicated that it would be difficult to obtain records of the applicant's mother's earlier school attendance, yet he did not describe any such efforts to do so. In light of the above discussion, counsel's assertion that additional evidence is not required is not persuasive.

Based on the foregoing, the record does not show that the applicant's mother was continuously present in the United States for one year beginning from the time of her birth. Therefore, the applicant has not established that his mother met the residency requirement of section 309 of the Act.

The regulation at 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 not met his burden in the present matter. The appeal will therefore be dismissed.<sup>1</sup>

**ORDER:** The appeal is dismissed.

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<sup>1</sup> It is noted that the present application fails for a lack of evidence. The record does not affirmatively indicate that the applicant is ineligible for a certificate of citizenship. The dismissal of this appeal is without prejudice to the applicant, and he may file a new Form N-600 with additional evidence if he feels he may meet the requirements of section 309 of the Act.