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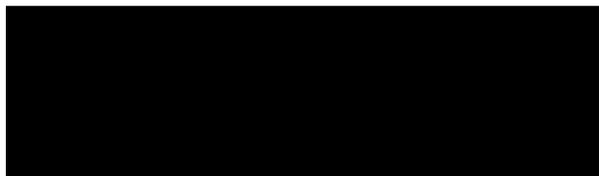
U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:



Office: ST. PAUL, MN

Date:

JUL 02 2007

IN RE:

Applicant:



APPLICATION: Application for Certificate of Citizenship under Section 301(g) of the Immigration and Nationality Act; 8 U.S.C. § 1401(g).

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, St. Paul, MN, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant was born on September 9, 1998, in Aguascalientes, Mexico. The applicant's parents are [REDACTED] and [REDACTED]. The applicant's mother is a native-born U.S. citizen, born in 1976 in California. The applicant claims that he derived U.S. citizenship at birth from his mother.

The district director evaluated the applicant's eligibility for citizenship under sections 301 and 320 of the Act, 8 U.S.C. § 1401 and 1431. The district director found that the applicant was ineligible for benefits under section 320 of the Act, 8 U.S.C. § 1431, because he had not been admitted to the United States as a lawful permanent resident and because there was no evidence that he was residing with his mother. The district director further found that the applicant was ineligible for citizenship under section 301(g) of the Act, 8 U.S.C. § 1401(g), because he had failed to establish his mother's required U.S. presence.

On appeal, the applicant submits school records, another copy of his mother's birth certificate, and a letter from [REDACTED] certifying his mother's employment as his housekeeper and part-time babysitter from 1990 to 1995.

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.

The record in this case contains a letter signed by the applicant's mother where she explains that she lived in California from birth and until 1981, when her parents decided to move to Mexico. *See* Letter from [REDACTED] dated April 7, 2006. She further explains that she returned to the United States in 1990, when she was 14 years old. *Id.* She claims she attended Reseda High School starting in 1990. *Id.* She states that she returned to Mexico in 1995, where she met [REDACTED]. *Id.* She claims that she did not formally marry [REDACTED], although she did marry "from the catholic church." *Id.* She had two children with [REDACTED] the applicant's sister in 1996 and the applicant in 1998. *Id.* She decided to return to the United States in 2005. *Id.*

The AAO finds that the letter from [REDACTED] submitted on appeal, corroborates the applicant's mother's statements. The record, moreover, contains a copy of the applicant's mother's high school transcript indicating that she attended Reseda High School during the 1990-1991 school year. The AAO thus finds that the applicant has established that his mother was present in the United States for a continuous period of one year.

Although the applicant's father's name is contained in his birth certificate, there is no evidence in the record to suggest that the applicant's parents were married at the time of his birth or subsequently. The applicant's

mother states that she was married by the church. See Letter from [REDACTED], dated April 7, 2006. A religious marriage, however, does not result in a valid marriage in Mexico. See *Matter of Rodriguez-Cruz*, 18 I&N Dec. 72 (BIA 1981). The AAO finds that the applicant was thus born out-of-wedlock and is eligible for benefits under section 309(c) of the Act, 8 U.S.C. § 1409(c).¹

8 C.F.R. § 341.2(c) provides that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. In order to meet this burden, the applicant must submit relevant, probative and credible evidence to establish that the claim is “probably true” or “more likely than not.” *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989).

Section 309(c) of the Act, 8 U.S.C. § 1409(c), requires that the applicant establish that he was born out-of-wedlock to a U.S. citizen mother who had been physically present in the United States for a continuous period of one year. The AAO concludes that the applicant has met this burden by a preponderance of the evidence. He therefore has established that he acquired U.S. citizenship through his mother at birth. The appeal will be sustained.

ORDER: The appeal is sustained.

¹ Having found the applicant to be eligible for benefits under section 309(c) of the Act, 8 U.S.C. § 1409(c), the AAO need not address the applicant’s potential eligibility under sections 301 and 320 of the Act, 8 U.S.C. § 1401 and 1431. The AAO nevertheless notes that the record suggests that the applicant’s mother was physically present in the United States for the period required under 301(g) of the Act. Because the applicant was not admitted to the United States as a lawful permanent resident, he is ineligible for citizenship under section 320 of the Act, 8 U.S.C. § 1431.