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U.S. Citizenship
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Services

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FILE:



Office: SAN ANTONIO

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DEC 19 2008

IN RE:

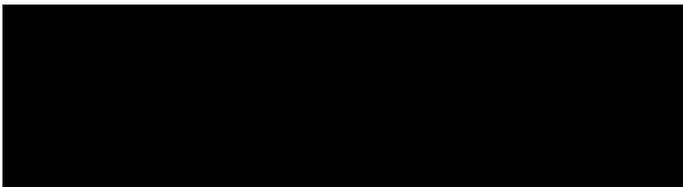
Applicant:



APPLICATION:

Application for Certificate of Citizenship under Section 309 of the Immigration and Nationality Act; 8 U.S.C. § 1409.

ON BEHALF OF APPLICANT:



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 "John F. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, San Antonio, Texas, 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 January 26, 1977 in Mexico. The applicant was born out of wedlock to [REDACTED], a U.S. citizen born in Texas on March 24, 1952. The applicant claims that she acquired U.S. citizenship at birth through her mother and seeks a certificate of citizenship pursuant to section 309 of the Immigration and Nationality Act, 8 U.S.C. § 1409.

The field office director determined that the applicant did not acquire U.S. citizenship through her mother because she failed to establish that her mother was continuously present in the United States for the required period of time. On appeal, the applicant maintains that her mother was present in the United States continuously for over one year starting in 1966.

“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 applicant in this case was born in 1977.

Because the applicant was born out of wedlock, the provisions set forth in section 309 of the Act apply to her 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 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 the applicant’s birth certificate. The record also includes, in relevant part, the applicant’s mother’s birth certificate, affidavits executed by the applicant’s mother and maternal grandfather, the applicant’s mother’s sworn statement at the applicant’s interview, and the applicant’s brother’s school records.

Section 309(c) of the Act, 8 U.S.C. § 1409(c), requires that the applicant establish that she 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 notes that the applicant’s mother claims that her mother was physically present in the United States from 1966. *See* Affidavit of [REDACTED]. The applicant’s grandfather states that the applicant’s mother was present in the United States until the age of four, and then again since 1966. *See* Affidavit of [REDACTED]. The applicant’s mother’s sworn statement, dated in 2007, indicates that she left the United States as a small child, returned at the age of 14 (in 1966), and thereafter “would go [to Mexico] about every 15 days” for the weekend.

The AAO notes the Board of Immigration Appeals finding 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 record contains evidence indicating that the applicant's mother was physically present in the United States from 1966 until the applicant's birth in 1977, but the evidence in this regard does not establish that her presence was continuous. Specifically, the AAO notes the applicant's mother's sworn testimony that she would travel to Mexico "about every 15 days" for the weekend. Nevertheless, the applicant's mother and grandfather consistently maintain that she first departed the United States as a small child. The applicant's grandfather indicates that his daughter, the applicant's mother, was in the United States until the age of four. The AAO therefore finds that it is more likely than not that the applicant's mother was physically present in the United States for a continuous period of one year after her birth and before her first departure to Mexico.

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). The applicant has met her burden and the appeal will be sustained.

ORDER: The appeal is sustained.