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U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED] Office: SAN FRANCISCO, CA (SAN JOSE) Date: JUL 08 2008

IN RE: Applicant: [REDACTED]

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

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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the District Director, San Francisco, California (San Jose), and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The record reflects that the applicant was born on February 5, 1965 in Mexico. The applicant was born out of wedlock to [REDACTED]. The applicant's mother acquired U.S. citizenship at birth, on December 22, 1942. The applicant maternal grandmother was a native-born U.S. citizen. 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 (the Act), 8 U.S.C. § 1409.

The district director denied the application finding that the applicant did not acquire U.S. citizenship because she failed to establish that her mother was continuously present in the United States for the required period of time. The director noted that the applicant's previous Forms N-600, Applications for Certificate of Citizenship, had also been denied.

At the outset, the AAO notes that the instant Form N-600, Application for Certificate of Citizenship, the applicant's third, must be rejected pursuant to 8 C.F.R. § 341.6, which states that "[a]fter an application for a Certificate of Citizenship has been denied and the appeal time has run, a second application submitted by the same individual shall be rejected and the applicant instructed to submit a motion for reopening or reconsideration . . . ."<sup>1</sup>

"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 applicant in this case was born in 1965.

Because the applicant was born out of wedlock, the provisions set forth in section 309 of the Act, as in effect in 1961, 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 other had previously been physically present in the United States or one of its outlying possessions for a continuous period of one year.

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<sup>1</sup> A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). The applicant in this case has not provided any additional evidence or argument that would warrant reopening or reconsideration of the previous decision in this case.

The record in this case contains, in relevant part, the applicant's birth certificate, the applicant's mother's certificate of citizenship, the applicant's grandmother's birth certificate, and affidavits from the applicant, her mother, and other relatives.

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 the important inconsistencies in the record, particularly with regard to the applicant's mother's date of entry into the United States. The contemporaneous statements made in connection with the applicant's mother's citizenship application raise serious doubts regarding the credibility of the affidavits submitted with the more recent application. The applicant provides no documentary evidence to corroborate the statements made by her relatives in 2004. The applicant previously explained that her mother's inconsistent statements were due to her being frightened and confused, and maintained that they should not be grounds for discrediting her testimony. The applicant does not provide any persuasive explanation for the discrepancies in the record.<sup>2</sup> Therefore, the AAO must conclude that the applicant did not establish that her mother was continuously present in the United States for a period of one year prior to her birth.

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 not met her burden and the appeal will be rejected.

**ORDER:** The appeal is rejected.

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<sup>2</sup> 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.)