

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. 3000  
Washington, DC 20529-2090  
MAIL STOP 2090



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY

E2

FILE: [REDACTED] Office: HARLINGEN, TX Date: NOV 04 2008

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under Sections 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.

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, Harlingen, 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 December 5, 1986 in Mexico. The applicant's mother, [REDACTED], was born in Nebraska on July 11, 1968. The applicant seeks a certificate of citizenship under section 309(c) of the Act, 8 U.S.C. § 1409(c), based on the claim that he acquired U.S. citizenship at birth through his mother.

The district director denied the applicant's citizenship claim upon finding that the applicant had failed to establish that his mother had the required one year of continuous physical presence in the United States. The application was accordingly denied.

On appeal, the applicant, through counsel, maintains that his mother was present in the United States as required by section 309(c) of the Act, 8 U.S.C. § 1409(c). On September 16, 2008, the AAO issued a request for evidence asking the applicant to submit his birth certificate and the documents cited in his brief, including any documents establishing his mother's physical presence in the United States prior to 1986. The applicant, through counsel, responded to the AAO's request on October 15, 2008.

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.

The AAO notes that the record now contains a copy of the applicant's birth certificate, listing [REDACTED] as his mother. The AAO further notes that the applicant's birth certificate does not list his father's name. The AAO finds that the applicant is the son of [REDACTED], and that he was born out of wedlock.

The record establishes that the applicant's mother was born in Nebraska on July 11, 1968. The record now includes a copy of the applicant's mother's declaration, indicating that she was physically present in the United States for "four or five years" after her birth. *See Declaration of Applicant's Mother* at ¶ 3. She also indicates, in relevant part, that she was physically present in the United States from 1983 to 1986. *Id.* at ¶¶ 6 and 8. The record contains copies of the applicant's mother school records, indicating that she attended Presidio High School from January 1984 to May 1984 and from August 1984 to October 1984. The AAO also notes the applicant's mother's baptismal certificate, and the affidavit from her cousin [REDACTED].

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 affidavits submitted consistently indicate that the applicant's mother was physically present in the United States from 1983 to 1985. The affidavits are also consistent and detailed, and to the extent possible, are corroborated by documentary evidence. Specifically, the AAO notes that the applicant's mother was enrolled in school from January through October 1984, and appears to have remained in the United States through the summer holiday and through the end of 1984. Indeed, the record suggests that the applicant's mother remained in the United States until shortly before the applicant's birth in 1986.

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 AAO 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. The applicant in the present case has met his burden and the appeal will be sustained.

**ORDER:** The appeal is sustained.