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U.S. Citizenship
and Immigration
Services

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FILE:

Office: SAN ANTONIO, TX

Date:

FEB 11 2009

IN RE:

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:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

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 District Director, San Antonio, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on February 6, 1980 in Mexico. The applicant birth certificate indicates that her parents were [REDACTED] and [REDACTED]. The applicant's parents were married in Texas in July 1980. The applicant's mother was born in Texas on October 29, 1965. The applicant seeks a certificate of citizenship based on the claim that she acquired U.S. citizenship at birth through her late mother.

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

On appeal, the applicant states, in relevant part, that the director's denial "is based on erroneous facts and misleading testimony." See Statement of Applicant on Form I-290B, Notice of Appeal to the AAO. The applicant indicates, through counsel, that additional evidence or a brief will be submitted within 60 days, on or about July 12, 2005. The record does not contain any appellate brief or additional evidence. The record does indicate, however, that the director attempted to obtain additional evidence from the applicant but that the applicant, through counsel, requested that the appeal proceed on the basis of the record "as is." See E-mail from [REDACTED] dated February 8, 2008.

"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 1980. Because the applicant was born out of wedlock, section 309(c) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1409(c), applies 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.

The record contain the following documentary evidence relating to the applicant's mother physical presence in the United States prior to February 1980: 1) her birth certificate, 2) a copy of her social security earnings statement indicating income for the year 1979, 3) a statement from the applicant's maternal grandfather indicating that the applicant's mother "was living with [him] since she was born," 4) her junior high school identification card and a letter verifying that she attended during the 1978-79 school year, 5) her social security card, 6) undated employee identification cards from [REDACTED] and [REDACTED] and 7) the applicant's father's sworn statement

indicating that the applicant's mother resided in Texas but frequently traveled to Mexico to visit her family.

The AAO finds that the applicant has not met her burden to establish the one year of continuous physical presence in the United States required by section 309(c) of the Act, 8 U.S.C. § 1409(c). Although the record suggests that the applicant's mother was physically present in the United States prior to the applicant's birth in 1980, there is no evidence that she was present for one continuous year. In fact, the record indicates that the applicant's mother traveled to Mexico every two weeks while she lived with her father in Texas. Her attendance at a Texas school during the 1978-79 school year does not demonstrate that she was present in the United States for one continuous year.

A person may only obtain citizenship in strict compliance with the statutory requirements imposed by Congress. *INS v. Pangilinan*, 486 U.S. 875, 885 (1988). Even courts may not use their equitable powers to grant citizenship, and any doubts concerning citizenship are to be resolved in favor of the United States. *Id.* at 883-84; *see also United States v. Manzi*, 276 U.S. 463, 467 (1928) (stating that "citizenship is a high privilege, and when doubts exist concerning a grant of it ... they should be resolved in favor of the United States and against the claimant"). Moreover, "it has been universally accepted that the burden is on the alien applicant to show his eligibility for citizenship in every respect." *Berenyi v. District Director, INS*, 385 U.S. 630, 637 (1967).

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 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 concludes that the applicant has failed to meet her burden to establish eligibility for citizenship under this or any other provision of the Act.¹ The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.

¹ The director properly noted that the applicant is also ineligible for citizenship under section 301 of the Act, 8 U.S.C. § 1401, because her mother was 14 years old when the applicant was born (and therefore cannot establish that she had the required physical presence in the United States after the age of 14, but prior to the applicant's birth).