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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

E2



FILE:



Office: NEW YORK

Date:

MAR 24 2009

IN RE:

Applicant:



APPLICATION:

Application for Certificate of Citizenship under Section 205 of the Immigration and Nationality Act; 8 U.S.C. § 205.

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 District Director, New York, New York, 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 March 30, 1940 in Brazil. The applicant was born out of wedlock to [REDACTED]. The applicant's mother was born abroad on May 5, 1920 and acquired U.S. citizenship at birth through her mother, [REDACTED]. The applicant claims that he acquired U.S. citizenship at birth through his mother and seeks a certificate of citizenship pursuant to the Act of May 24, 1934, 48 Stat. 79.

The field office director determined that the applicant did not acquire U.S. citizenship from his mother because he failed to establish that she was continuously present in the United States for one year as required by section 309(c) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1409(c).¹

On appeal, the applicant, through counsel, maintains that his citizenship claim arises from the Act of May 24, 1934, 48 Stat. 797, which requires the applicant to establish only that his mother was present in the United States prior to his birth (and not that she be continuously present for one year). See Statement of the Applicant on Form I-290B, Notice of Appeal to the AAO. The AAO notes that counsel indicated that a brief or additional evidence would be submitted to the AAO within 30 days, but that no such brief or evidence has been received by this office.

“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 on [REDACTED]. Therefore, the Act of May 24, 1934 and the Nationality Act of 1940 are applicable to the applicant's case.

The Act of May 24, 1934 generally granted U.S. citizenship to children born abroad to a U.S. citizen parent. Section 205 of the Nationality Act of 1940 more specifically provided for out-of-wedlock children stating, relevant part, that

In the absence of [] legitimation or adjudication, the child, whether born before or after the effective date of this Act [January 14, 1941], if the mother had the nationality of the United States at the time of the child's birth, and had previously resided in the United States or one of its outlying possessions, shall be held to have acquired at birth her nationality status.

¹ 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 in this case contains the applicant's birth certificate listing his mother, [REDACTED] but not his father. The birth certificate also lists, *inter alia*, the applicant's grandmother, [REDACTED]

The record also includes a copy of the applicant's mother's passport application, a copy of the applicant's Brazilian passport and immigrant visa documentation indicating he immigrated as the child of a U.S. citizen, a 1930 census report indicating that the applicant's grandmother and mother resided in New York, a certificate indicating that the applicant's mother's First Communion was in 1928, and a copy of the applicant's grandmother's U.S. passport. The applicant's mother's and grandmother's birth certificates are not in the record.

The AAO notes the Board of Immigration Appeals finding in *Matter of Tijerina-Villarreal*, 13 I&N Dec. 327, 331 (BIA 1969), that "where a claim of derivative citizenship has reasonable support, it cannot be rejected arbitrarily." 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 the applicant has met his burden to establish that he was born abroad to a U.S. citizen who had been physically present in the United States prior to his birth (in 1940). Specifically, the AAO notes that the applicant's grandmother's passport records and the applicant's mother's passport application, as well as the applicant's immigration records, indicate that the applicant's mother obtained U.S. citizenship through her own mother, [REDACTED]. The First Communion Certificate and the 1930 Census Report indicate that the applicant's mother was present in the United States prior to the applicant's birth in 1940. The applicant's mother's passport application indicates her intent to depart from the United States in 1939. A note in the applicant's grandmother's passport records indicates that she brought her daughter, the applicant's mother, to the United States in 1922.

The AAO thus concludes that the applicant has met his burden to establish that he was born abroad to a U.S. citizen mother who had been previously present in the United States. The appeal will therefore be sustained.

ORDER: The appeal is sustained.