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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

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[redacted]

FILE: Office: SAN ANTONIO, TX Date: MAY 07 2009

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.

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).

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 dismissed.

The record reflects that the applicant was born on November 7, 1978 in Mexico. The applicant's parents, as indicated in his birth certificate, are and . The applicant's parents were married to each other in 1987. The applicant claims that his mother is a U.S. citizen, born in 1929 in Texas. The applicant claims that he acquired U.S. citizenship at birth through his 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 from his mother because he failed to establish that she was his mother, that she was a U.S. citizen, or that she was continuously present in the United States for the required period of time.

On appeal, the applicant resubmits his birth certificate and his mother's birth certificate, and a statement indicating, in part, that his mother was having marital problems with her husband when he was born and that the delay in his birth registration was due to life circumstances.

"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 1978.

Because the applicant was born out of wedlock, the provisions set forth in section 309 of the Act apply to his 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 Sates 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 and his mother's birth certificate. The AAO notes that the applicant's birth was registered in 1989, over 10 years after his birth. The applicant's mother's birth certificate was also delayed. The AAO also notes the testimony of , stating that the applicant's mother had only four children from 1948 to 1961. USCIS records suggest that the applicant's mother only had four children, not including the applicant. In view of this contradictory evidence, the AAO cannot find that the applicant has established, by a preponderance of the evidence, that was his mother.

More importantly, the AAO cannot find that was present in the United States or one of its outlying possessions for a continuous period of one year as required by section 309(c) of the Act. The applicant claims that his mother was present in the United States from 1929 to 1978. The evidence in the record does not corroborate his claim. Thus, even if

was the applicant's mother, the evidence in the record does not establish her continuous physical presence in the United States.[1]

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.)

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 his burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.

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[1] The AAO notes that there is a social security earnings statement in the applicant's file which may relate to his mother, but it does not establish that she was continuously present for one year prior to the applicant's birth (in 1978). The statement indicates no meaningful income prior to 1978 (and minimal earnings for the years 1951, 1956, 1960, 1968 and 1969).