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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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FILE:

Office: EL PASO

Date:

MAY 19 2009

IN RE:

Applicant:

APPLICATION:

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

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.

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, El Paso, 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 January 16, 1980 in Mexico. The applicant's parents, as indicated in his birth certificate, are [REDACTED] and [REDACTED]. The applicant's parents were married to each other on April 16, 1980.¹ The applicant claims that his mother is a U.S. citizen, born on August 21, 1961 in Texas. The applicant claims that he acquired U.S. citizenship at birth through his mother.

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 physically present in the United States for the period of time required by section 301(a)(7) of the former Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(a)(7).²

On appeal, the applicant maintains that the field office director did not consider the affidavits submitted. The applicant further stated that the applicant's siblings have obtained certificates of citizenship "under the same facts." See Form I-290B, Notice of Appeal to the AAO.

"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. At the time of the applicant's birth, his parents were not married to each other. The applicant was therefore born out of wedlock and 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 States at the time of such person's birth, and if the mother 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 record also includes his parents' marriage certificate. Further, the record includes affidavits executed by family and acquaintances, and school records, evidencing that the applicant's mother resided in the United States from 1967 to 1969, 1972 to 1974, and 1977 to 1980.

¹ The AAO notes that the applicant indicates in his Form N-600, Application for Certificate of Citizenship, that his parents were married on February 17, 1981.

² Section 301(a)(7) of the former Act was re-designated as section 301(g) by the Act of October 10, 1978, Pub. L. 95-432, 92 Stat. 1046. The requirements of section 301(a)(7) remained the same after the re-designation and until 1986.

The AAO finds that the applicant has established, by a preponderance of the evidence, that his mother 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 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 applicant has met his burden and the appeal will be sustained.

ORDER: The appeal is sustained.