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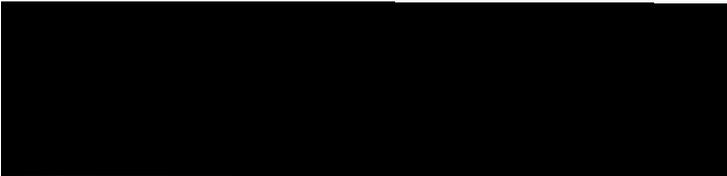
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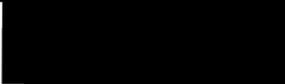
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090

U.S. Citizenship  
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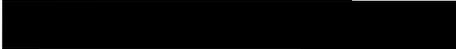


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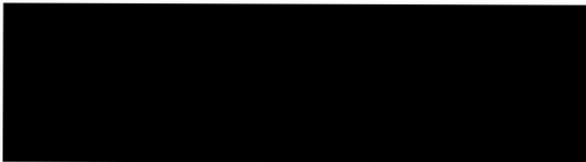
SEP 04 2009

IN RE:



APPLICATION: Application for Certificate of Citizenship under Sections 301(g) and 309(c) of the  
Immigration and Nationality Act; 8 U.S.C. §§ 1401(g) and 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.

John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The application was denied by the Field Office Director, Atlanta, Georgia, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant claims to have been born on April 29, 2003 in Mexico. The applicant claims that his mother is [REDACTED] who was born on May 10, 1979 in Atlanta, Georgia. The applicant's putative father, [REDACTED] is not a U.S. citizen. The record reflects that on November 17, 2007, the Juvenile Court for Cherokee County, Georgia terminated the parental rights to the applicant of [REDACTED] and any unknown father. The applicant is now in the custody and care of the Georgia Department of Family and Children Services (DFCS). The applicant seeks a certificate of citizenship pursuant to section 301(g) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(g), based on the claim that he acquired U.S. citizenship at birth through his mother.

In a decision dated January 14, 2008, the field office director denied the applicant's citizenship claim upon finding that the applicant had failed to establish eligibility under sections 301(g) or 320 of the Act, 8 U.S.C. §§ 1401(g) or 1431. In particular, the field office director found that the applicant had failed to prove that [REDACTED] is his mother, as no birth certificate or DNA test results involving [REDACTED] were submitted. The field office director also found that the applicant failed to prove that [REDACTED] and [REDACTED] were ever married. The field office director also noted that the applicant failed to submit evidence of his inspection and legal admission to the United States, or that he is residing in the legal and physical custody of his citizen parent, as required to acquire citizenship under section 320 of the Act. The application was denied accordingly.

On appeal, counsel contends that the field office director erred in applying the requirements of sections 301(g) and 320 of the Act cumulatively, rather than as separate legal provisions defining how citizenship is acquired under different circumstances. Counsel asserts that the applicant acquired citizenship under section 301(g) of the Act, and the requirements found in section 320 of the Act are therefore irrelevant. Counsel contends that because a birth certificate for the applicant is unattainable, and because [REDACTED] has refused to assist further in these proceedings, the applicant has submitted the evidence available to demonstrate that [REDACTED] is his mother and that she is a natural-born U.S. citizen who was physically present in the United States for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years, or for one year if the applicant is considered to have been born out-of-wedlock and the standard found in section 309(c) of the Act is applied. Counsel asserts that the evidence submitted is sufficient to meet the applicable preponderance of evidence standard.

The evidence submitted by the applicant includes, but is not limited to, originals and/or copies of an affidavit sworn to on May 23, 2006 by [REDACTED] who was incarcerated, in which she states that she was resident in the United States at the time the applicant was born on April 29, 2003; an inmate record for [REDACTED] a letter dated December 31, 2007 and an affidavit dated February 20, 2008 from [REDACTED] of the Cherokee County office of the DFCS detailing the department's interactions with the applicant, [REDACTED] and [REDACTED]; a birth certificate for [REDACTED] listing [REDACTED] as her mother; DNA test results from the DNA Diagnostic Center in Fairfield, Ohio indicating that there is 90% chance that the applicant and [REDACTED] are [REDACTED]

siblings; a letter dated August 24, 2006 purportedly from [REDACTED] to applicant's counsel in which she discusses her relationship with the applicant and her daughter Selina; school records showing that [REDACTED] attended public school in Georgia as a child; [REDACTED] birth certificate showing that she was born in the United States; an affidavit dated September 25, 2007 from [REDACTED] detailing unsuccessful efforts to obtain a Mexican birth record for the applicant; a letter dated October 19, 2005 from [REDACTED], Consul General of Mexico, in which he states that a review of birth records in the States of Vera Cruz and Tabasco yielded no information concerning the applicant; a letter dated October 5, 2007 from John D. Cline, attorney with Thompson & Cline, P.C., in which Mr. Cline indicates that his firm represented the DFCS in the termination of parental rights proceedings and provides details concerning those proceedings; an affidavit dated October 5, 2007 from [REDACTED] then Guardian Ad Litem for the applicant, in which she provides details concerning the termination proceedings and interactions with Ms. [REDACTED] and court records from the Juvenile Court for Cherokee County, Georgia. The entire record has been reviewed in rendering a decision on the appeal.

Section 301 of the Act, 8 U.S.C. § 1401, provides, in relevant part, that the following shall be nationals and citizens of the United States at birth:

(g) a person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years: *Provided*, That any periods . . . during which such citizen parent is physically present abroad as the dependent unmarried son or daughter and a member of the household of a person . . . honorably serving with the Armed Forces of the United States . . . may be included in order to satisfy the physical presence requirement of this paragraph.

The AAO maintains plenary power to review each appeal on a de novo basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's de novo authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

8 C.F.R. § 103.2(b) provides, in pertinent part:

(1) *Demonstrating eligibility at time of filing.* An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the application or petition. All required application or petition forms must be properly completed and filed with any initial evidence required by the applicable regulations and/or the form's instructions. . . .

(2) *Submitting secondary evidence and affidavits*—(i) *General*. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. If a required document, such as a birth or marriage certificate, does not exist or cannot be obtained, an applicant or petitioner must demonstrate this and submit secondary evidence, such as church or school records, pertinent to the facts at issue. If secondary evidence also does not exist or cannot be obtained, the applicant or petitioner must demonstrate the unavailability of both the required document and relevant secondary evidence, and submit two or more affidavits, sworn to or affirmed by the persons who are not parties to the petition who have direct personal knowledge of the event and circumstances. Secondary evidence must overcome the unavailability of primary evidence, and affidavits must overcome the unavailability of both primary and secondary evidence.

(ii) *Demonstrating that a record is not available*. Where a record does not exist, the applicant or petitioner must submit an original written statement on government letterhead establishing this from the relevant government or other authority. The statement must indicate the reason the record does not exist, and indicate whether similar records for the time and place are available. However, a certification from an appropriate foreign government that a document does not exist is not required where the Department of State's Foreign Affairs Manual indicates this type of document generally does not exist. An applicant or petitioner who has not been able to acquire the necessary document or statement from the relevant foreign authority may submit evidence that repeated good faith attempts were made to obtain the required document or statement. However, where USCIS finds that such documents or statements are generally available, it may require that the applicant or petitioner submit the required document or statement.

“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 (9<sup>th</sup> Cir. 2000) (citations omitted).

Step 2, part 3 of the Instructions for N-600, Application for Certificate of Citizenship, lists the documents “that must be submitted with the Form N-600” for the applicant and the U.S. citizen parent through whom the applicant is claiming citizenship. The required documents include birth and marriage certificates. If it is not possible to obtain these records, the instructions provide that baptismal certificates, church records, school records, census records or affidavits may be submitted. The AAO notes that USCIS also accepts DNA test results as proof of parentage.

As noted above, the applicant has not submitted his birth certificate to establish his date of birth, place of birth, or parentage. That the applicant was born on April 29, 2003 in Mexico is demonstrated only by the statements of others concerning assertions apparently made by Ms.

at various times, and by her father's statement to an employee at DFCS that [REDACTED] contacted him from Mexico in June 2003 to ask for assistance in returning to the United States. There is no direct testimony, however, from [REDACTED], or other direct evidence, to substantiate the

claim that the applicant was born on April 29, 2003 in Mexico.<sup>1</sup> Furthermore, it is noted that Ms. [REDACTED] has been found not to be trustworthy by the officials of the government of the State of Georgia who reported [REDACTED]'s claims concerning the date and place of birth of the applicant. As stated by [REDACTED] concerning this claim, "based upon [REDACTED] history of being uncooperative with [DFCS], or her reported abuse of drugs/alcohol, of her other children (from various fathers) being placed in [DFCS] custody and her numerous incarcerations, the veracity of [REDACTED] was questionable."

Notwithstanding the applicant's failure to prove his date and place of birth, AAO finds that the evidence submitted is sufficient to demonstrate that [REDACTED] is the applicant's mother. The AAO acknowledges that this is an unusual case, one in which the primary and secondary evidence typically submitted to demonstrate parentage is not available. However, the unavailability of the applicant's birth certificate, or detailed affidavits from his parents or others with firsthand knowledge of the birth, has been adequately demonstrated and explained in the record. The record shows that the [REDACTED] and [REDACTED] have been unwilling to contribute to these proceedings, particularly after their parental rights to the applicant were terminated. Nevertheless, the record does contain an affidavit and a letter from [REDACTED] in which she asserts that the applicant is her child. The DNA test results in the record are probative evidence that the applicant is the brother of [REDACTED], and a birth certificate in the record establishes that Ms. [REDACTED] is [REDACTED] mother. The AAO further notes that [REDACTED] has been recognized as the applicant's biological mother by the State of Georgia. The AAO finds that there is sufficient credible and probative evidence in the record to demonstrate that [REDACTED] is the applicant's mother.

The AAO notes that the record does not contain a marriage certificate or other sufficiently probative evidence to establish that the [REDACTED] and [REDACTED] were married at the time of the applicant's birth or at any other time.<sup>2</sup> Although the exact date of the applicant's birth has not been established to the satisfaction of the AAO, the AAO does find that there is sufficient evidence showing that the applicant was born after November 14, 1986, and is currently under 18 years of

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<sup>1</sup> The AAO notes that there is also no evidence to show that the applicant was born in the United States other than [REDACTED] assertion in her affidavit that she was a resident of the United States at that time. The applicant has not asserted that he derived citizenship as a consequence of birth within the United States, and the AAO will therefore accept that the applicant was born outside the United States in these proceedings.

<sup>2</sup> In an October 5, 2007 response to a request for further evidence, counsel indicated that the Juvenile Court of Cherokee County, Georgia presumed that the [REDACTED] and [REDACTED] were married, but stated that no affidavits could be submitted because the whereabouts of [REDACTED] and [REDACTED] were unknown at that time. The AAO notes that the court documents in the record do not contain any specific finding by the Juvenile Court that [REDACTED] and [REDACTED] were ever married, although it appears that the court did presume that they were in fact the biological parents of the applicant. The AAO also notes that in a letter dated August 24, 2006 purportedly from [REDACTED], she states that her address subsequent to her release from prison would be "with [her] future husband."

age. However, as there is insufficient evidence showing that the applicant was born in wedlock, the AAO finds that the applicant was thus born out-of-wedlock and is eligible for benefits under section 309(c) of the Act, 8 U.S.C. § 1409(c).<sup>3</sup>

Section 309 of the Act provides, in pertinent part:

(c) Notwithstanding the provision of subsection (a) of this section, 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 applicant established that his mother is a native-born U.S. citizen by submitting her birth certificate, and the school records and other evidence presented demonstrate that she was physically present in the United States for more than one year before his birth. The applicant thus acquired U.S. citizenship at birth under section 309(c) of the Act.

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 requires that the applicant establish that he 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 met this burden by a preponderance of the evidence. He therefore has established that he acquired U.S. citizenship through his mother at birth. The appeal will be sustained.

**ORDER:** The appeal is sustained.

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<sup>3</sup> Having found the applicant to be eligible for benefits under section 309(c) of the Act, the AAO need not address the applicant's potential eligibility under sections 301 and 320 of the Act. Nevertheless, the AAO notes that the record suggests that the applicant's mother was physically present in the United States for the period required by section 301(g) of the Act. Because the applicant was not admitted to the United States as a lawful permanent resident, he is ineligible for citizenship under section 320 of the Act.