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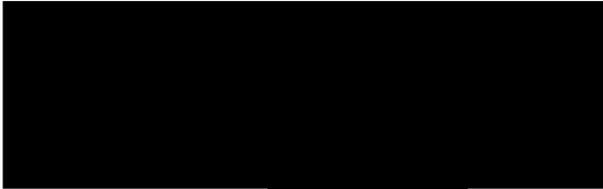
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS2090
Washington, DC 20529-2090

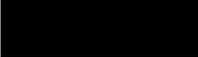


U.S. Citizenship
and Immigration
Services

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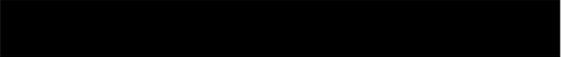


Office: HARLINGEN, TEXAS

Date:

APR 15 2010

IN RE:



APPLICATION: Application for Certificate of Citizenship under Section 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.

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application for a certificate of citizenship was denied by the Harlingen Field Office Director and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant claims he acquired citizenship at birth through his mother. The field office director found contradictions in the record and determined that the applicant had not demonstrated that his mother was continuously present in the United States for one year prior to his birth, as required for the applicant to acquire citizenship under section 309(c) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1409(c). On appeal, counsel asserts that the field office director erroneously failed to interview the applicant's mother to resolve any questions regarding her presence in the United States prior to the applicant's birth.

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. *See Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1028 n.3 (9th Cir. 2000) (internal citation omitted). The record in this case shows that the applicant was born in Mexico on March 20, 1971. The applicant's mother was born in Mexico on September 14, 1947 and acquired U.S. citizenship from the applicant's maternal grandmother, who was also a U.S. citizen. The applicant's biological parents never married. Accordingly, section 309(c) of the Act, as amended and in effect in 1971, applies to the applicant's case.

Section 309(c) of the Act states, in pertinent part that:

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.

In her June 7, 2005 declaration, the applicant's mother stated that she lived and worked in the United States since approximately 1965 when she was 18 years old until she was one month pregnant with the applicant (on or about July 1970). The applicant's mother recounted that during those years she worked in Brownsville, Texas as a maid, for approximately six months at a restaurant and "for approximately two or three years (on and off)" at a bakery. She explained that she "had always worked without a permit" until she obtained employment authorization for seven months in 1969 while her application for a certificate of citizenship was pending. The applicant's mother also indicated that she did not work after she met the applicant's biological father in 1970, moved to Houston and lived with him there for approximately one month before she returned to Mexico.

The applicant submitted a Social Security Administration record for his mother stating her earned income for, in pertinent part, 1969 and 1970. U.S. Citizenship and Immigration Services (USCIS) records also document the applicant's mother's presence in the United States on June 24, 1966, the date she was interviewed and granted a border crossing card and on September 23, 1968, the date

she signed her application for a certificate of citizenship through April 1969 when she received her certificate.

Upon *de novo* review,¹ we find that the contradictions asserted by the field office director are not supported by the relevant evidence of record. The field office director determined that the applicant's mother's statement that she came to the United States in 1965 was inconsistent with the issuance of her border crossing card on June 24, 1966. However, the applicant's mother stated that she came to the United States when she was 18 years old. At the time her border crossing card was issued on June 24, 1966, the applicant's mother was 18 years old.

We acknowledge, as noted by the field office director, that the applicant's mother stated on her application for a certificate of citizenship that she had last entered the United States on September 23, 1968. Nonetheless, the record indicates that the applicant's mother was continuously present in the United States for at least one year after that date and before the applicant's birth.

The field office director concluded that the applicant's mother's earnings as shown on her social security statement were not representative of a full year in either 1969 or 1970. The applicant's mother explained, however, that she "worked without a permit" intermittently for three different employers during her first years in the United States. The applicant's mother stated that she only obtained employment authorization for seven months after she filed her application for a certificate of citizenship. She further indicated that she did not work after she moved to Houston with the applicant's biological father until she returned to Mexico when she was one month pregnant with the applicant, which would have been in or about July 1970. Accordingly, the applicant's mother's declaration is consistent with her limited earnings for 1969 and 1970, as reported on her social security statement.

In sum, the preponderance of the evidence demonstrates that the applicant's mother was physically present in the United States for a continuous period of one year prior to the applicant's birth and that he meets the remaining requirements to have acquired citizenship at birth through his mother pursuant to section 309(c) of the Act.

The applicant bears the burden of proof in these proceedings to establish his citizenship by a preponderance of the evidence. Section 341(a) of the Act, 8 U.S.C. § 1452(a); 8 C.F.R. § 341.2(c). The applicant here has met his burden and the appeal will be sustained. The matter will be returned to the Harlingen Field Office for issuance of a certificate of citizenship.

ORDER: The appeal is sustained.

¹ The AAO exercises *de novo* review over all appeals within its jurisdiction. 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.").