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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: [Redacted] Office: ATLANTA, GA Date: DEC 20 2010

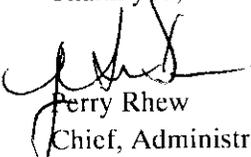
IN RE: Applicant: [Redacted]

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

ON BEHALF OF APPLICANT:
[Redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Jerry Rhew
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 was born on August 10, 1989 in Mexico to [REDACTED]. The applicant's mother was born on February 15, 1974 in Illinois. The applicant seeks a certificate of citizenship claiming that she acquired U.S. citizenship at birth through her mother.

The field office director denied the applicant's citizenship claim upon finding, in pertinent part, that she had provided conflicting birth certificates and therefore her eligibility for citizenship could not be established.

On appeal, the applicant, through counsel, explains the circumstances surrounding her birth and maintains that she acquired U.S. citizenship through her mother. *See* Appeal Brief.

The AAO reviews these proceedings *de novo*. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The applicant has established her eligibility for citizenship and the appeal will be sustained for the reasons discussed below.

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. 2001) (internal citation omitted). The applicant in the present matter was born in 1989. Because the applicant was born out of wedlock, the provisions set forth in section 309 of the Act apply to her 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 other had previously been physically present in the United States or one of its outlying possessions for a continuous period of one year.

The evidence in the record includes DNA test results that confirm that [REDACTED] is the applicant's mother. The record also contains the birth certificate of [REDACTED] indicating that she was born in Illinois in 1974. Additionally, the record contains an affidavit executed by the applicant's mother and her school records indicating that she was physically present in the United States prior to the applicant's birth. The AAO finds that the evidence submitted establishes that the applicant's mother was physically present in the United States for a continuous period of one year as is required by section 309(c) of the Act. Therefore, the applicant acquired U.S. citizenship at birth.

The burden in these proceedings is on the applicant to establish eligibility for U.S. citizenship by a preponderance of the evidence. Section 341 of the Act, 8 U.S.C. § 1452; 8 CFR § 341.2. The

applicant in this case has met her burden of proof. The appeal will therefore be sustained. The matter will be returned to the Atlanta Field Office for issuance of a certificate of citizenship.

ORDER: The appeal is sustained. The matter will be returned to the Atlanta Field Office for issuance of a certificate of citizenship.