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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: A92 944 980 Office: LOS ANGELES, CALIFORNIA Date: **DEC 22 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)

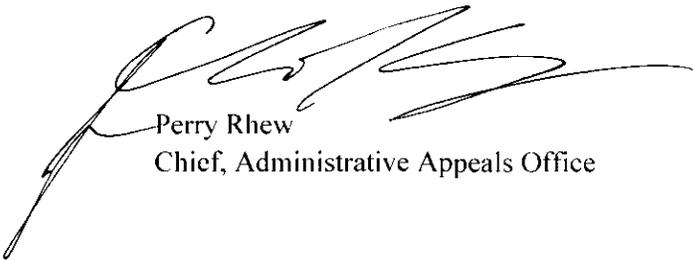
ON BEHALF OF PETITIONER:



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,



Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Application for Certificate of Citizenship (Form N-600) was denied by the District Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant was born in Mexico City, Mexico, on May 9, 1957. The applicant's parents, [REDACTED] were not married at the time of his birth. The applicant's mother was born in the United States on May 16, 1931. The applicant seeks a certificate of citizenship pursuant to section 309(c) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1409(c), based on the claim that he acquired U.S. citizenship at birth through his mother.

The director determined that the applicant presented a false Mexican birth certificate in support of his application, and questioned the validity of the applicant's mother's California birth certificate. The application was denied accordingly. On appeal, the applicant contends through counsel that the director erred in: (1) denying his application without providing an opportunity to present evidence in response to the finding that he presented a false birth certificate; (2) questioning the validity of his mother's birth certificate; and (3) finding that he did not acquire U.S. citizenship through his mother. The applicant submitted a copy of a DNA maternity report and additional evidence on appeal. On September 23, 2010, the AAO issued a Notice of Derogatory Evidence, providing the applicant with an opportunity to present evidence in response to the identified inconsistencies. In response, the applicant submitted, among other things, a declaration explaining the inconsistent dates of birth in the record; copies of the relevant birth certificates; and a sealed copy of the DNA maternity report.

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. INS*, 247 F.3d 1026, 1028 n.3 (9th Cir. 2001). Because the applicant was born out of wedlock, section 309(c) of the Act, 8 U.S.C. § 1409(c) (1957), as in effect at the time of his birth in 1957, applies to his case.

Section 309(c) of the Act provided, in relevant part:

a person born, on or after [December 24, 1952], outside the United States 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.

Accordingly, the applicant must establish that his mother is a U.S. citizen who was physically present in the United States for a continuous period of one year before his birth on May 9, 1957.

Here, the applicant has shown by a preponderance of the evidence that he meets the requirements for the automatic acquisition of citizenship through his mother. First, the applicant has presented credible evidence that he was born to [REDACTED] on May 9, 1957, in Mexico City. *See Birth Certificate for [REDACTED]* registered June 26, 1957, in Mexico City; *Certificate of Baptism for [REDACTED]* (showing baptism on May 11, 1957); *DNA Maternity Report* (showing 99.999% probability of maternity); *Declaration of [REDACTED]* dated Sept. 30, 2010; *Affidavit of [REDACTED]* dated June 23, 2006; *Affidavit of [REDACTED]*

dated June 19, 2006. Second, the applicant has credibly addressed and explained the use of an incorrect birth certificate, which was obtained by his father on his behalf. *See Declaration of Birth Certificates.* Third, the record shows that the applicant's mother is a U.S. citizen based on her birth in El Monte, California, on May 16, 1931. *See Amended Birth Certificate for* originally dated May 18, 1931 (including a filed Affidavit to Correct a Record to add the name *Copy of U.S. Passport for* Fourth, the evidence supports the applicant's claim that his mother was physically present in the United States for a continuous period of one year before his birth in 1957. Specifically, in addition to the applicant's mother's birth certificate, the record contains the applicant's mother's certificate of baptism, showing that she was baptized in Los Angeles, California on August 1, 1931; documents relating to the applicant's maternal uncle showing that he was born and baptized in El Monte, California in April, 1932; and a birth certificate for the applicant's maternal aunt showing that she was born in Alhambra, California on March 25, 1933. Finally, U.S. Citizenship and Immigration Services records show that three of the applicant's brothers were granted certificates of citizenship based on the same evidence of their mother's birth and presence in the United States that was presented in the instant case. *See* A72 267 604, A76 623 016, A77 105 498.

The applicant bears the burden of proof to establish the claimed citizenship by a preponderance of the evidence. Section 341 of the Act, 8 U.S.C. § 1452; 8 C.F.R. § 341.2(c). The applicant has resolved the inconsistencies in the record and has established by a preponderance of the evidence that his mother was continuously physically present in the United States for the requisite period prior to his birth. Accordingly, the applicant is eligible for citizenship under section 309(c) of the Act, as in effect at the time of his birth. The appeal will be sustained, the decision of the director will be withdrawn, and the matter will be returned to the director for the issuance of a certificate of citizenship.

ORDER: The appeal is sustained. The matter is returned to the Los Angeles District Office for issuance of a certificate of citizenship.