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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services

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FILE:

Office: EL PASO, TX

Date:

FEB 17 2010

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew

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 dismissed.

The record reflects that the applicant was born on October 21, 1966 in Mexico. The applicant's parents, as indicated in her birth certificate, are [REDACTED] and [REDACTED]. The applicant's parents were married in Mexico on March 10, 1978. The applicant's mother was born in Mexico on February 11, 1946, but she acquired U.S. citizenship at birth through a U.S. citizen parent. The applicant now seeks a certificate of citizenship claiming that she acquired U.S. citizenship through her mother.

The field office director determined that the applicant did not acquire U.S. citizenship from her mother because she failed to establish that she was physically present in the United States for the period of time required by section 309(a) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1409(a).

On appeal, the applicant, through counsel, maintains that the field office director erred in finding a contradiction in the affidavits submitted in support of the applicant's claim. Specifically, the applicant explains that her mother resided in Socorro, Texas and commuted over 62 miles to Las Cruces, Texas to work in a restaurant in 1963. *See* Applicant's Appeal Brief at 3. Thus, according to the applicant, there is no contradiction between her mother's cousin's statement that she was living in Socorro, and the affidavit of [REDACTED] (which states that the applicant's mother worked in Las Cruces).

"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 1966. At the time of the applicant's birth, her 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 other 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, in relevant part, the applicant's birth certificate, her parents' marriage certificate, the applicant's siblings' birth certificates, the applicant's mother's certificate of citizenship, and affidavits executed by her mother's cousins and [REDACTED]. The record also includes social security statements dated after the applicant's birth (and therefore irrelevant to the applicant's claim).

The AAO finds that the applicant has failed to establish, by a preponderance of the evidence, that her 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:

[W]here a claim of derivative citizenship has reasonable support, it cannot be rejected arbitrarily. However, when good reasons appear for rejecting such a claim such as the interest of witnesses and important discrepancies, then the special inquiry officer need not accept the evidence proffered by the claimant. (Citations omitted.)

The affidavits submitted in this case are inconsistent, lack sufficient detail and do not establish that the applicant's mother was physically present in the United States for a continuous period of one year as required by section 309(a) of the Act, 8 U.S.C. § 1409(a). The AAO notes counsel's explanation that the applicant's mother was residing in Socorro, Texas and working in Las Cruces, Texas, over an hour away. Counsel's explanation, however, is not evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988)(without documentary evidence to support the claim, the assertions of counsel will not satisfy an applicant's burden of proof); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983)(same); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)(same). Moreover, affidavits such as the one submitted by [REDACTED] state that the applicant's mother worked for his mother from 1961 to 1964 (and not at a restaurant in Las Cruces). The affidavits submitted by [REDACTED] and [REDACTED] all state that the applicant's mother spent the summers in Socorro, Texas between 1951 and 1959. This evidence, however, does not establish any continuous year of physical presence in the United States. The applicant has failed to submit any rental receipts, school or medical records, employment or tax documentation, or any other evidence to establish that her mother was present in the United States, continuously for one year, prior to her birth in 1966.

The requirements for citizenship, as set forth in the Act, are statutorily mandated by Congress, and USCIS lacks statutory authority to issue a Certificate of Citizenship when an applicant fails to meet the relevant statutory provisions set forth in the Act. A person may only obtain citizenship in strict compliance with the statutory requirements imposed by Congress. *INS v. Pangilinan*, 486 U.S. 875, 885 (1988); *see also United States v. Manzi*, 276 U.S. 463, 467 (1928) (stating that "citizenship is a high privilege, and when doubts exist concerning a grant of it ... they should be resolved in favor of the United States and against the claimant"). Moreover, "it has been universally accepted that the burden is on the alien applicant to show his eligibility for citizenship in every respect." *Berenyi v. District Director, INS*, 385 U.S. 630, 637 (1967).

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 AAO finds that the applicant has failed to meet her burden of proof and the appeal will be dismissed.

ORDER: The appeal is dismissed.