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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]

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FILE:

Office: SAN ANTONIO, TX

Date: JAN 04 2010

IN RE:

Applicant: [REDACTED]

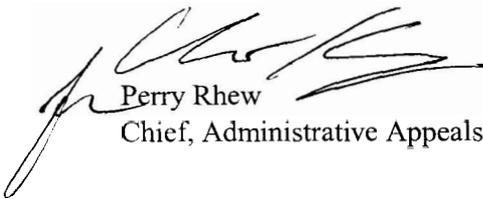
APPLICATION: Application for Certificate of Citizenship under Section 309(c) of the Immigration and Nationality Act, 8 U.S.C. § 1409(c).

ON BEHALF OF APPLICANT:

[REDACTED]

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.



Perry Rhew
Chief, Administrative Appeals Office

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

The record reflects that that the applicant was born on August 5, 1969 in Mexico. The applicant's birth certificate indicates that the applicant's parents are [REDACTED] and [REDACTED].

The applicant's mother was a native-born U.S. citizen, born on August 4, 1940. The applicant's parents were married in Texas in 1998. The applicant seeks a certificate of citizenship based on the claim that he acquired U.S. citizenship at birth through his mother.

The field office director denied the application finding that the applicant had failed to establish his mother's required physical presence in the United States. On appeal, the applicant, through counsel, maintains that his mother was continuously physically present in the United States until she was 2 ½ years old. *See Applicant's Statement on Form I-290B, Notice of Appeal.* The applicant further claims that the director should not have found it improbable that the applicant's mother was continuously present in the United States. *Id.*

"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 1969. Because the applicant was born out of wedlock, section 309(c) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1409(c), applies 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 mother had previously been physically present in the United States or one of its outlying possessions for a continuous period of one year.

The record contains a copy of a delayed birth certificate evidencing the applicant's mother's birth in the United States. The record also contains a biographical information sheet relating to the applicant's mother, an affidavit executed in 1986 by [REDACTED] and a statement by the applicant's maternal uncle.

The AAO finds that the applicant has established that his mother was physically present in the United States for a continuous period of one year. The AAO notes that the affidavit of [REDACTED] a lay minister, was executed in 1986 and accepted by the State of Texas as evidence of the applicant's mother's birth. This affidavit states that the applicant's mother remained in [REDACTED] home until she was 29 months old. The affidavit is detailed, contemporaneous and based on the affiant's personal knowledge. The AAO notes that [REDACTED] affidavit is consistent with the claims made by the applicant, and by his uncle.

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, 8 U.S.C. § 1409(c), 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 finds that the applicant has met his burden to establish, by a preponderance of the evidence, that his mother was continuously present in the United States for the first two years of her life. The appeal will therefore be sustained.

ORDER: The appeal is sustained.