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: HARLINGEN, TX Date: JUN 2 8 2010

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship under Section 205 of the Nationality Act of 1940

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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Harlingen, 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 August 26, 1950 in Mexico. The applicant's parents are and The applicant's mother was born in Mexico in 1932, but acquired U.S. citizenship at birth through her U.S. citizen parent. The applicant's parents were married in Mexico in 1971. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship at birth through his mother.

The field office director found that the applicant had failed to establish that his mother was physically present in the United States for one continuous year as required by section 309(c) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1409(c).[1] The application was accordingly denied.

On appeal, the applicant, through counsel, states that section 309(c) of the Act is not applicable to his case because he was born before December 23, 1952. *See* Statement of the Applicant on Form I-290B, Notice of Appeal to the AAO.

The AAO notes that "[t]he 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 was born in 1950. The Immigration and Nationality Act went into effect on December 24, 1952. The Nationality Act of 1940 (the Nationality Act), Pub. L. 76-853, 54 Stat 1137 (October 14, 1940), is therefore applicable in this case.

Section 205 of the Nationality Act provided, in relevant part, that

> In the absence of [] legitimation or adjudication, the child, whether born before or after [January 14, 1941], if the mother had the nationality of the United States at the time of the child's birth, and had previously resided in the United States or one of its outlying possessions, shall be held to have acquired at birth her nationality status.

The record in this case establishes that the applicant's mother acquired U.S. citizenship at birth. The applicant's mother testified that she did not begin residing in the United States until 1990. There is

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[1] Section 309(c) of the Act 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.

no indication in the record that the applicant's mother resided in the United States prior to the applicant's birth as required by section 205 of the Nationality Act.

The burden in these proceedings is on the applicant to establish his mother's U.S. residence 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 not met his burden of proof. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.