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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

E2

[redacted]

FILE: [redacted] Office: EL PASO, TX Date: JUN 2 9 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,

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 sustained.

The record reflects that the applicant was born on June 24, 1988 in Mexico. The applicant's parents are and The applicant's mother was born in Mexico on October 16, 1959, but acquired U.S. citizenship at birth through her U.S. citizen parent. The applicant's parents were married in Mexico on January 27, 1995. 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). The application was accordingly denied.

On appeal, the applicant, through counsel, maintains that his mother was present in the United States for a continuous period of one year, including the year she was employed by Mr. which is evidenced by his affidavit and daily diary. *See* Appeal Brief, and documents accompanying appeal.

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 1988. Section 309(c) of the Act is therefore applicable to this case.

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.

The record in this case includes, in relevant part, the applicant's birth certificate, the applicant's mother's birth and U.S. citizenship certificates, the applicant's brother's birth certificate, the applicant's parents' marriage certificate, photographs and affidavits from family and acquaintances (including the applicant's mother's employer).

The AAO finds that the documents in the record indicate that the applicant's mother was physically present in the United States for a continuous period of one year prior to the applicant's birth in April of 1988. The applicant has submitted detailed affidavits, which are corroborated by the documentary evidence relating to his mother's employment. The AAO notes also that the record contains photographs of the applicant's mother's residences, and a number of affidavits attesting to her

physical presence in the United States. Lastly, the AAO notes that the Immigration Judge terminated the applicant's removal proceedings. The applicant explains that his mother's employer testified under oath in his removal proceedings. *See* Applicant's Appeal Brief. The applicant further explains that his mother had not mentioned her employment with Mr. initially because of her medical condition. *Id.* The AAO finds that the evidence in the record sufficiently establishes that the applicant's mother was physically present in the United States for a continuous one year period prior to 1988, as is required by section 309(c) of the Act.

The applicant's burden is to establish his mother's physical presence by a preponderance of the evidence. The applicant in this case has met his burden of proof. The appeal will therefore be sustained.

ORDER: The appeal is sustained.