

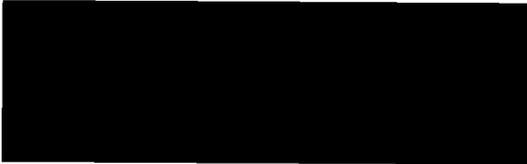
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



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FILE: [REDACTED] Office: EL PASO, TX Date: MAY 0 5 2010

IN RE: Applicant: [REDACTED]

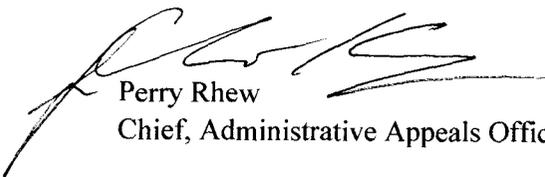
APPLICATION: Application for Certificate of Citizenship under Section 309(c) of the
Immigration and Nationality Act; 8 U.S.C. § 1409(c).

ON BEHALF OF APPLICANT:



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, 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 April 18, 2005 in Mexico. The applicant's maternal grandmother filed his Form N-600, Application for Certificate of Citizenship, on the applicant's behalf. The application lists [REDACTED] as the applicant's mother. The applicant was born out of wedlock. The applicant's mother was born in the United States on September 3, 1982. The applicant's mother transferred guardianship of the applicant to his grandmother in 2005. The applicant claims that he acquired U.S. citizenship at birth through his mother.

The field office director denied the applicant's claim upon finding that the DNA test results submitted were not generated at an accredited DNA lab. On appeal, the applicant, through his grandmother, states that the DNA test was performed by a physician listed as an approved civil surgeon. *See* Appeal Brief. He maintains that he was abandoned by his U.S. citizen mother, but that he acquired U.S. citizenship through her under section 309(c) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(c).

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 citations omitted). The applicant was born in 2005. Section 309(c) of the Act, 8 U.S.C. § 309(c), is therefore applicable to this 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 applicant must thus establish that his mother was a U.S. citizen who had been physically present in the United States for a continuous period of one year prior to his birth (in 2005).

The AAO finds that the preponderance of the evidence establishes that the applicant's mother is [REDACTED]. The AAO notes that, in this regard, the record contains the applicant's hospital birth records indicating that [REDACTED] is his mother and a document executed by [REDACTED] purporting to transfer his guardianship.¹ The record contains a copy of the applicant's mother's Texas

¹ The DNA test results also indicate an over 99% likelihood of a relationship between the applicant and his maternal grandmother. The DNA test was not performed at an accredited lab. Nevertheless, the AAO finds that the applicant has met his burden to prove, by a preponderance of the evidence, that his mother was [REDACTED] even without taking the DNA evidence into account.

birth certificate, establishing her U.S. citizenship. Lastly, the record contains copies of the applicant's mother's immunization and high school records. These records establish that the applicant's mother was physically present in the United States for at least one continuous year prior to 2005.

The regulation at 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 applicant in the present case has met his burden of proof and the appeal will be sustained.

ORDER: The appeal is sustained.