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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: BLOOMINGTON, MN Date: OCT 18 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) (1963)

ON BEHALF OF APPLICANT:

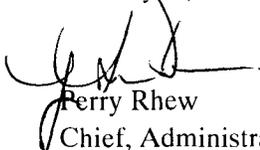
[REDACTED]

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. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. 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 for a certificate of citizenship was denied by the Bloomington, Minnesota Field Office Director (the director). The director subsequently granted the applicant's motion to reopen and affirmed the denial of the application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant was born in Mexico to a U.S. citizen mother. He seeks a certificate of citizenship claiming that he acquired citizenship at birth through his mother. 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. *See Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1028 n.3 (9th Cir. 2000) (internal citation omitted). The record in this case shows that the applicant was born out of wedlock in Mexico on August 17, 1963. The applicant's mother acquired U.S. citizenship at birth through her mother, the applicant's grandmother, who was born in the United States in 1911. The applicant's father is not a U.S. citizen. Accordingly, section 309(c) of the Act, 8 U.S.C. § 1409(c), as in effect at the time of the applicant's birth in 1963, applies to this case.

Section 309(c) of the Act stated, in pertinent part that:

a person born, on or after the effective date of this Act [December 23, 1952], outside the United States 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 field office director found the relevant evidence insufficient to establish that the applicant's mother was continuously present in the United States for one year prior to his birth. On appeal, counsel asserts that the director failed to give sufficient weight to the statements of the applicant's mother and aunt and did not interview them or the applicant. Counsel submits additional affidavits as well as property and birth records for a family that the applicant's mother stated she worked for in Texas for approximately two years prior to the applicant's birth. Counsel further claims that the applicant was prejudiced by his prior counsel's failure to submit any evidence with the N-600 regarding his mother's requisite presence in the United States.

The AAO reviews these proceedings *de novo*. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Counsel's claims and the additional evidence submitted on appeal fail to overcome the ground for denial and the appeal will be dismissed.

Ineffective Assistance of Prior Counsel

On the Form N-600, the applicant left blank section eight regarding the dates of his mother's physical presence in the United States. The applicant also failed to provide this information and any relevant evidence in response to the director's subsequent request. On motion, present counsel asserted that the applicant's failure to provide the requested evidence was due to the ineffective assistance of his prior counsel. In his July 17, 2009 affidavit submitted with the motion, the

applicant explained that he did not recall prior counsel ever asking him if his mother had lived in the United States prior to his birth. He also stated that his prior counsel prepared documents that the applicant "signed without reading them." On appeal, counsel claims that the applicant's case was prejudiced by his prior counsel's failure to elicit information and evidence regarding the applicant's mother's requisite presence in the United States.

To establish the ineffective assistance of prior counsel, an applicant must submit: (1) an affidavit setting forth in detail the agreement that was entered into with the purportedly ineffective counsel with respect to the actions to be taken and what representations prior counsel did or did not make to the applicant in this regard, (2) evidence that the attorney whose integrity or competence is being impugned be informed of the allegations leveled against him or her and be given an opportunity to respond, and (3) evidence regarding whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd* 857 F.2d 10 (1st Cir. 1988), *reaff'd* *Matter of Compean*, 25 I&N Dec. 1 (AG 2009).

In this case, the record contains evidence meeting the first two requirements, but not the third. In his July 17, 2009 affidavit, the applicant described in detail his agreement and interactions with his prior counsel. On motion, present counsel also submitted his correspondence with prior counsel regarding the allegedly ineffective assistance. Present counsel stated on motion that he was considering filing a complaint against prior counsel with the appropriate disciplinary authorities, but the record, as supplemented on appeal, contains no evidence that such a complaint was ever filed or any explanation for why such action was not taken. Consequently, the applicant has failed to establish the ineffective assistance of his prior counsel.

Presence of the Applicant's Mother in the United States Prior to His Birth

Regardless of the failure to demonstrate the ineffective assistance of prior counsel, the evidence submitted on motion adequately resolved the discrepancy in the record regarding the applicant's initial failure to provide any information regarding his mother's presence in the United States before his birth. The evidence submitted on motion and on appeal is not, however, sufficient to meet the applicant's burden of proof.

The record shows that the applicant's mother was born in Mexico on June 22, 1936 to her U.S. citizen mother and that she obtained a certificate of citizenship in 2008 attesting to her acquisition of U.S. citizenship at birth. In her affidavit submitted on motion, the applicant's mother stated that when she was 15 or 16 years old, she worked for the [REDACTED] family in Sonora, Texas for about two years. She stated that she helped Mrs. [REDACTED] cook, clean and take care of the family's two children, a boy and a girl, who were about eight and five years old respectively. The applicant's mother explained that she did not remember the address of the family's home and had no documentation of her stay with them because they paid her in cash and she did not attend school, receive medical care or make any purchases. In her affidavit submitted on motion, the applicant's aunt recounted that in 1951 or 1952 when the applicant's mother was about 15 years old, a lady whose name she does not recall took the applicant's mother to work for her at an unspecified place.

The applicant's aunt stated that the applicant's mother sent money and letters to her to give to their mother and that the applicant's mother stayed in the United States for about two years and three months.

On appeal, the applicant explains that he brought his mother to [REDACTED] and that the county assessor helped them locate the address of the [REDACTED] property, which had been sold to another family. The record also contains a January 8, 2002 obituary of a member of the [REDACTED] family, a printout of the results of an internet search for [REDACTED] documents showing that [REDACTED] purchased property in [REDACTED] Texas in 1943, which he sold to another individual in 1965; and records that [REDACTED] had a son born in 1940 and a daughter born in 1943.

While the relevant evidence shows that the [REDACTED] family owned property in [REDACTED] Texas from 1943 to 1965, the evidence does not demonstrate that the applicant's mother stayed with the family continuously for a period of at least one year prior to the applicant's birth. We recognize the difficulties the applicant faces in trying to document his mother's presence in the United States nearly 60 years ago. However, the statements of the applicant's mother and his aunt lack sufficient probative and detailed information regarding his mother's time working for the [REDACTED] family. In addition, his mother's statement that the [REDACTED] children were approximately eight and five years old at the time (1951-1952) is inconsistent with the records of their births indicating that the son was between 11 and 12 and the daughter was between eight and nine years old at the time. While a reasonably supported citizenship claim may not be rejected arbitrarily, important discrepancies and the interest of witnesses will detract from the probative value of the relevant evidence. *See Matter of Tijerina-Villarreal*, 13 I&N Dec. 327, 331 (BIA 1969).

The applicant has failed to demonstrate that his mother was physically present in the United States for a continuous period of one year prior to his birth, as required for the applicant to have acquired citizenship at birth through his mother pursuant to section 309(c) of the Act.

The applicant bears the burden of proof in these proceedings to establish his citizenship by a preponderance of the evidence. Section 341(a) of the Act, 8 U.S.C. § 1452(a); 8 C.F.R. § 341.2(c). The applicant has not met his burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.