

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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

**PUBLIC COPY**

E<sub>2</sub>



FILE:



Office: HARLINGEN, TX

Date:

**OCT 22 2010**

IN RE:

Applicant:



APPLICATION:

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

ON BEHALF OF APPLICANT:



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 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 September 3, 1981 in Mexico. The applicant's parents, as indicated in his birth certificate, are [REDACTED]. The applicant's parents were never married to each other. The applicant's mother was born in Mexico on [REDACTED] but she acquired U.S. citizenship at birth through a U.S. citizen parent. The applicant now seeks a certificate of citizenship claiming that he acquired U.S. citizenship through his mother.

The field office director determined that the applicant did not acquire U.S. citizenship from his mother because he failed to establish that she was physically present in the United States for the period of time required by section 309(c) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1409(c).

On appeal, the applicant, through counsel, submits two revised affidavits and maintains that there were no contradictions in the previously submitted evidence. *See* Applicant's Appeal Brief. The applicant claims that his mother was physically present in the United States for a continuous period of one year as is statutorily required. *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. *See Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1028 n.3 (9<sup>th</sup> Cir. 2001) (internal citation omitted). The applicant in this case was born in 1981. Because the applicant was born out of wedlock, section 309 of the Act applies to his case.

Section 309(c) of the Act provides, in relevant part, that

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 contains, in relevant part, the applicant's birth certificate, his mother's birth, baptismal and citizenship certificates, and affidavits executed by his mother, as well as [REDACTED] and [REDACTED]. The applicant's mother states in her affidavit that she resided with her uncle [REDACTED] in the United States for about three years since she was "approximately four years old." *See* Affidavit of [REDACTED]. She states that she did not attend school. *Id.* She further states that she again resided with her uncle in the United States from the time she was eight until she was eleven years old. *Id.* She states that she had five children with the applicant's father, all born in Mexico. *Id.*; *see also* Biographical Sheet of [REDACTED]. She was married in Texas in 1989 to someone other than the applicant's father. *Id.* [REDACTED] the applicant's mother's cousins, state in their affidavits, in relevant part, that the applicant's mother lived in their ranch from 1965 to 1968 and attended school in Laredo, Texas. *See* Affidavits of

██████████ also states that his mother took care of the applicant's mother since birth, in 1962. *Id.*

The AAO notes the Board of Immigration Appeals finding in *Matter of Tijerina-Villarreal*, 13 I&N Dec. 327, 331 (BIA 1969), that:

[W]here a claim of derivative citizenship has reasonable support, it cannot be rejected arbitrarily. However, when good reasons appear for rejecting such a claim such as the interest of witnesses and important discrepancies, then the special inquiry officer need not accept the evidence proffered by the claimant. (Citations omitted.)

The affidavits submitted in this case are inconsistent, lack sufficient detail, and do not establish that the applicant's mother was physically present in the United States for a continuous period of one year as required by section 309(c) of the Act. There is no corroborating documentary evidence in the record. The AAO notes that the applicant's mother states in her affidavit that she never attended school, but her cousin's affidavits contradict her statement. Further, the affidavit of ██████████ is internally inconsistent, stating both that the applicant's mother was cared for by his mother since birth and that the applicant's mother lived with them from 1965 to 1968. The AAO notes further that the applicant's mother, according to her biographical sheet, resided in Mexico until 1966, and that her older children were born in Mexico in 1978 and 1979. The record does not establish, by a preponderance of the evidence, that the applicant's mother was present in the United States or one of its outlying possessions for a continuous period of one year prior to the applicant's birth as required by section 309(c) of the Act.

The burden in these proceedings is on the applicant to establish his mother's physical presence in the United States by a preponderance of the evidence. Section 341 of the Act, 8 U.S.C. § 1452; 8 CFR § 341.2. The applicant has not met his burden of proof and his appeal will be dismissed.

**ORDER:** The appeal is dismissed.