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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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Date: DEC 28 2011

Office: DENVER, CO

FILE: 

IN RE: 

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

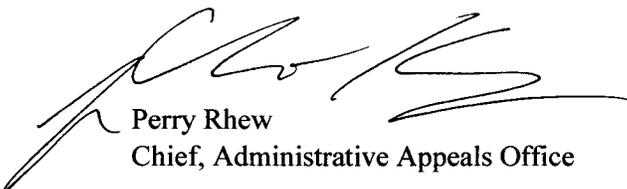
ON BEHALF OF APPLICANT: Self-represented

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 \$630. 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 Certificate of Citizenship (Form N-600) was denied by the Field Office Director, Denver, Colorado, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born in Pachuca, Hidalgo, Mexico, on [REDACTED]. The applicant's mother, [REDACTED], was not married at the time of the applicant's birth. The applicant's mother is a U.S. citizen by birth in St. Louis, Missouri on [REDACTED]. [REDACTED] The applicant seeks a certificate of citizenship pursuant to section 309(c) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1409(c), based on the claim that he acquired U.S. citizenship at birth through his mother.

The field office director determined that that the applicant was ineligible for a certificate of citizenship because he had failed to establish that he had acquired citizenship through his mother under section 309(c) of the Act. The application was denied accordingly. *See Decision of the Field Office Director*, dated August 19, 2011. On appeal, the applicant states that independent corroboration of his mother's presence in the United States is not available due to the length of time that has passed and submits additional affidavits from witnesses as to his mother's physical presence in the United States. *See Form I-290B*, dated September 13, 2011.

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. INS*, 247 F.3d 1026, 1028 n.3 (9th Cir. 2001). Since the applicant was born out of wedlock, section 309(c) of the Act, 8 U.S.C. § 1409(c) (1957), as in effect at the time of his birth in 1979, applies to his case.

Section 309(c) of the Act provided, in relevant part:

a person born, on or after [December 24, 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.

Accordingly, the applicant must establish that his mother is a U.S. citizen who was physically present in the United States for a continuous period of one year before his birth on [REDACTED]. The applicant contends that his mother was born in the United States; moved to Mexico in 1949 as an infant; returned to the United States from 1967 through 1974 on repeated trips; resided in the United States from August 1974 until May 1975 and from [REDACTED]. *See Form N-600, Application for Certificate of Citizenship and Addendum*.

In support of these contentions, the applicant presented a Mexican Birth Certificate indicating that he was born to [REDACTED] [REDACTED] *See Birth Certificate* [REDACTED] registered February 19, 1980, [REDACTED] Mexico. The applicant presented a Missouri Birth Certificate indicating that [REDACTED] birth in Saint Louis, Missouri on July 29, 1949 was registered on August 5, 1949. *See Certificate of Birth*, issued June 22, 1976. The applicant presented a photocopy of a Missouri Identification Card issued

██████████ indicating her address as ██████████
██████████ See Missouri Identification Card for ██████████. The applicant presented a Social Security Administration Statement for ██████████, indicating that, prior to the applicant's birth, she reported earnings in 1977. See Social Security Administration Statement.

The applicant presented an affidavit from his mother in which she states that she resided in Mexico from 1950 until 1967 with her grandparents. She states that she returned to the United States in 1967 and resided with her father's second family in Saint Louis. She states that she remained at home to help her stepmother with her stepsiblings. She states that she was not permitted to have friends, go out or to join any sport activity or clubs. She states that this is why there are no records regarding her stay in the United States. She states that in late 1970 her father agreed to permit her to work as a babysitter for a few hours. She states that she was only permitted to work for people that her father knew who had also come from Mexico. She states that her father later found a restaurant owner, ██████████ for whom she worked part-time in her restaurant. She states that she returned to Mexico in 1977 to care for her grandfather after her grandmother passed away. On appeal, the applicant presented a sworn statement from his mother in which she stated she resided in her father's ██████████

The applicant's mother's statements misspell the name of her former employer and lack probative detail.

The applicant presented a sworn statement from ██████████ in which she states that ██████████ was an employee at her former place of business, ██████████, from 1974 until 1977. The applicant presented a second sworn statement from ██████████ dated August 17, 2005, indicating that she met ██████████ in June 1974 and that ██████████ started working for her restaurant, ██████████. She states that ██████████ was employed by her until ██████████ statements lack detail and are internally inconsistent as to the dates the applicant's mother was employed.

The applicant presented a sworn statement from ██████████, dated April 29, 2003, in which she states that ██████████ resided in her father's home in Saint Louis, Missouri for a long period of time at ██████████ when she returned to Mexico. The applicant presented a second sworn statement from ██████████ dated August 19, 2005, indicating that she knew ██████████ because her grandparents are her aunt and uncle. She states that she moved to Saint Louis in the 1970s. She states that ██████████ in a kitchen from 1976 through 1977. ██████████ statements lack detail and provide dates of her residence on ██████████ in Saint Louis which are inconsistent with the petitioner's mother's statement on appeal.

The applicant presented a sworn statement from ██████████ dated October 19, 2010, in which he states that ██████████ his sister, resided with him and his parents at ██████████ Louis, Missouri, through the year 1977, during which time they went on a trip to Mexico. ██████████ statement provides no further probative information or supporting details.

The applicant presented a sworn statement from ██████████ in which she states that ██████████ her sister-in-law, resided in Saint Louis, Missouri with the ██████████ and 1977. She

states that [REDACTED] was present for the birth of her first daughter on [REDACTED]. [REDACTED] statement also lacks probative detail.

On appeal, the applicant presents a letter from [REDACTED], dated August 25, 2011, in which he states he knew and associated with [REDACTED] in the 1970's, specifically from June 1976 until December 1977 during which time she was living with her parents [REDACTED] (who has since passed away) and [REDACTED], at their [REDACTED] Saint Louis, Missouri. He states that he got to know [REDACTED] through their association with the Saint Louis Spanish group which was sponsored by the Central Congregation of Jehovah's Witnesses in Saint Louis, Missouri and met at the Kingdom Hall of Jehovah's Witnesses on [REDACTED]. He states that he regularly saw [REDACTED] at worship twice a week and that he regularly had dealings with [REDACTED] because he had responsibilities of oversight in the group. [REDACTED] statement is inconsistent with the applicant's mother's prior testimony indicating that she did not have contact outside the home apart from work and did not belong to any groups. On appeal, the applicant presents a sworn statement from [REDACTED] [REDACTED] dated August 30, 2011, in which she states that [REDACTED] was her son's babysitter during 1976 and 1977 when they [REDACTED] Saint Louis, Missouri. [REDACTED] statement is inconsistent with the applicant's mother's testimony which indicated that she worked as a babysitter from 1970 until she began working for a restaurant owner in the late 1970s.

On appeal, the applicant presents a sworn statement from [REDACTED] dated August 24, 2011, in which she states that she became acquainted with [REDACTED] in the summer of 1976 to 1977 at the congregation of Jehovah's Witnesses. She states that the applicant is the oldest daughter of [REDACTED] [REDACTED] and she lived at [REDACTED] Saint Louis, Missouri with her father and brothers. The witness' statement is inconsistent prior statements by the applicant's mother's indicating that she did not have contact outside the home outside of work and did not belong to any groups and is inconsistent in regard to the family's address.

On appeal, the applicant submits a handwritten letter that is in the Spanish language, which is not accompanied by an English translation, as is required by 8 C.F.R. § 103.2(a)(3).

Here, the applicant has failed to show by a preponderance of the evidence that he meets the second requirement for the automatic acquisition of citizenship through his mother, in that he has failed to present sufficient credible evidence that his mother resided in the United States for a continuous period of one year prior to his birth in 1979.

First, while the Missouri Identification Card and Social Security Administration Statement indicates that the applicant's mother was present in the United States in 1977, there is no other contemporary evidence to support a finding that she was *continuously physically* present in the United States for a period of one year. Second, although the applicant provided multiple statements, including affidavits from the applicant's mother testifying that the applicant's mother was present in the United States, some of the statements indicate that the witness lacks first-hand knowledge of the applicant's mother's exact whereabouts and activities during the period in question; some are internally inconsistent with their prior testimony or are inconsistent with testimony provided by other witnesses; and all lack detail and are not supported by other documentation of the applicant's mother's continuous physical presence in Texas for the required period. *Cf. Vera-Villegas v. INS,*

330 F.3d 1222, 1235 (9th Cir. 2003) (holding that the applicant met his burden of proving physical presence despite lack of contemporaneous documentation where he presented detailed testimony, three witnesses, and numerous affidavits); *Lopez Alvarado v. Ashcroft*, 381 F.3d 847, 854 (9th Cir. 2004) (finding that the applicants substantiated their physical presence in the United States through testimony by multiple employers, and letters from landlords, friends, family, and church members).

The applicant bears the burden of proof to establish the claimed citizenship by a preponderance of the evidence. Section 341 of the Immigration and Nationality Act, 8 U.S.C. § 1452; 8 C.F.R. § 341.2(c). The applicant has failed to establish by a preponderance of the evidence that his mother resided in the United States for the requisite period. Accordingly, the applicant is not eligible for a certificate of citizenship under section 309(c) of the Act, and the appeal will be dismissed.

ORDER: The appeal is dismissed.