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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

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[REDACTED]

FILE:

[REDACTED]

Office: EL PASO, TX

Date:

JAN 05 2011

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.

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 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,

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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 dismissed.

The record reflects that the applicant was born on June 11, 1959 in Mexico to [REDACTED]. The applicant's mother was born on May 10, 1920 in Texas. The applicant seeks a certificate of citizenship claiming that she acquired U.S. citizenship at birth through her mother.

The field office director denied the applicant's citizenship claim upon finding that she had failed to establish that her mother was present in the United States for a continuous period of one year.

On appeal, the applicant, through counsel, submits a copy of the applicant's mother's baptismal certificate and seeks reconsideration of the director's decision. See Statement of the Applicant on Form I-290B, Notice of Appeal to the AAO.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The applicant has not established her eligibility for citizenship and the appeal will be dismissed for the reasons discussed below.

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. 2001) (internal citation omitted). The applicant in the present matter was born in 1959. Because the applicant was born out of wedlock, the provisions set forth in section 309 of the Act, 8 U.S.C. § 1409(c), apply to her 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 other had previously been physically present in the United States or one of its outlying possessions for a continuous period of one year.

The evidence in the record includes, in relevant part, the applicant's birth certificate, the applicant's mother's birth, death and baptismal certificates, the applicant's sister's certificate of citizenship, a certificate indicating there is no marriage record between 1940 and 2009 listing the applicant's mother, and documents purporting to establish the applicant's grandparents' border crossings. As noted by the director, the applicant's sister was eligible for U.S. citizenship under a different provision of law not requiring "continuous" physical presence and reliance on the approval of the applicant's sister's citizenship claim is therefore misplaced. Although the applicant's mother's baptismal certificate indicates that she was baptized in Fabens, Texas on July 22, 1921, it is insufficient evidence to establish that the applicant's mother was present in the United States for a "continuous" period of one year. The AAO finds that the evidence submitted does 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. Therefore, the applicant did not acquire U.S. citizenship at birth.

The burden in these proceedings is on the applicant to establish eligibility for U.S. citizenship by a preponderance of the evidence. Section 341 of the Act, 8 U.S.C. § 1452; 8 CFR § 341.2. The applicant in this case has not met her burden of proof. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.