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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**

E₂



Date: **JUN 20 2011**

Office: HARLINGEN, TX

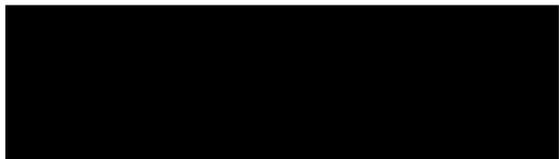
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IN RE:



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 PETITIONER:



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.

Thank you,

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Application for Certificate of Citizenship (Form N-600) was denied by the Field Office Director, Harlingen, 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 in Reynosa, Tamaulipas, Mexico, on August 26, 1978. The applicant's mother, [REDACTED], was not married at the time of her birth. The applicant's mother acquired U.S. citizenship at birth through her father. 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 she acquired U.S. citizenship at birth through her mother.

The director determined that the applicant had failed to respond to a request for evidence. On appeal, the applicant contends through counsel that the director erred in denying the application for failure to respond to a request for evidence because additional time was granted to the applicant to submit such evidence. On appeal, the applicant submits copies of the documentation submitted in response to the request for evidence, a copy of the director's grant of additional time to respond to the initial request for evidence and copies of evidence establishing that the applicant submitted the documentation in a timely manner.

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). Because 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 her birth in 1978, applies to her 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 her mother is a U.S. citizen who was physically present in the United States for a continuous period of one year before her birth on August 26, 1978.

Here, the applicant has shown by a preponderance of the evidence that she meets the requirements for the automatic acquisition of citizenship through her mother. First, the applicant has presented credible evidence that she was born to [REDACTED] on August 26, 1978, in Reynosa, Tamaulipas. *See Birth Certificate for [REDACTED]* registered October 4, 1978, in Reynosa, Tamaulipas; *Affidavit of [REDACTED]* dated August 27, 2009; *Affidavit of [REDACTED]* dated July 10, 2009. Second, the record shows that the applicant's mother acquired U.S. citizenship at her birth on November 24, 1956, through her father, Gregorio Moreno, a U.S. citizen. *See Certificate of Citizenship*, issued October 8, 1996. Third, the evidence supports the applicant's claim that her mother was physically present in the United States for a continuous period of one year before her birth in 1978. Specifically, the record contains

detailed and consistent affidavits from the applicant's mother, aunt and second cousin stating that the applicant's mother resided with her uncle, her uncle's family and her pregnant sister, [REDACTED], in the United States from April 1975 until December 1977; a birth certificate for the applicant's cousin in McAllen, Texas on November 28, 1975; an immunization card for the applicant's cousin reflecting presence at the address indicated in the affidavits on January 13, 1976; a marriage certificate for the applicant's aunt showing that the applicant's aunt was married in Hidalgo County, Texas on March 22, 1977; and property records establishing that the applicant's mother's uncle bought the house indicated in the affidavits in 1983. Finally, the record contains an affidavit from the applicant's mother stating that the applicant's mother and her family resided in the United States from 1959 until December 1961; and a Certificate of Baptism reflecting that the applicant's aunt was baptized in McAllen, Texas on July 23, 1961 and was born in McAllen, Texas on April 17, 1960.

The applicant bears the burden of proof to establish the claimed citizenship by a preponderance of the evidence. Section 341 of the Act, 8 U.S.C. § 1452; 8 C.F.R. § 341.2(c). The applicant has established by a preponderance of the evidence that her mother was continuously physically present in the United States for the requisite period prior to her birth. Accordingly, the applicant is eligible for citizenship under section 309(c) of the Act, as in effect at the time of her birth. The appeal will be sustained, the decision of the director will be withdrawn, and the matter will be returned to the director for the issuance of a certificate of citizenship.

ORDER: The appeal is sustained. The matter is returned to the Harlingen, Texas Field Office for issuance of a certificate of citizenship.