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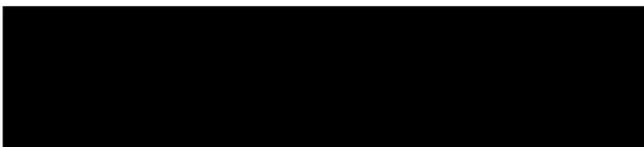
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: LOS ANGELES, CA Date: MAR 31 2011

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).

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, 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 was denied by the Field Office Director, Los Angeles, California, 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 December 17, 1965 in Mexico to [REDACTED] and [REDACTED]. The applicant's mother was born in California on July 8, 1924. The applicant's parents were married in 1972 in Mexico. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship at birth through his mother.

The field office director denied the applicant's citizenship claim upon finding that he had failed to establish that his mother was a U.S. citizen, or that she had been present in the United States for a continuous period of at least one year prior to the applicant's birth as is 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, states that the applicant's mother was born in [REDACTED] in 1924 and that the applicant has established, by a preponderance of the evidence, that his mother was present in the United States for a period of at least one continuous year. *See* Appeal Brief.

The AAO reviews these proceedings *de novo*. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). 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, out of wedlock, in 1965. Therefore, section 309(c) of the Act is applicable to his case.

Section 309(c) of the Act, 8 U.S.C. §1409(c), states, 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 mother had previously been physically present in the United States or one of its outlying possessions for a continuous period of one year.

In support of his claim, the applicant submitted his birth certificate, his parents' marriage certificate, a birth certificate purporting to be his mother's and an affidavit executed by his mother's younger sister. The applicant also submitted a copy of a prison document stating that he was a U.S. citizen, referring to a decision by a U.S. Court of Appeals, as well as a copy of said decision.

The AAO finds that the applicant has failed to establish that his mother was a U.S. citizen or that she was physically present in the United States as required by section 309(c) of the Act. As noted by the field office director, the applicant's mother's purported birth certificate does not list her name. Moreover, the letter submitted by the applicant's aunt was accompanied by her U.S. passport indicating that she was born in 1935 and she, therefore cannot attest to the applicant's mother's birth or residence in the United States as claimed. The applicant's aunt has

no personal knowledge of events preceding her birth, nor is there corroborating evidence in the record to support her assertions. Finally, the decision by the U.S. Court of Appeals for the Ninth Circuit simply holds that the lower court erred in excluding evidence of the applicant's mother's citizenship in his illegal reentry prosecution. Neither the Ninth Circuit's decision, nor the U.S. District Court's dismissal of the illegal reentry charges, establishes that the applicant is a U.S. citizen. At best, these decisions indicate that the prosecutor failed to prove, beyond a reasonable doubt, that the applicant is an alien.

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 failed to meet his burden of proof. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.