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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: **MAY 03 2011**

Office: PHOENIX, AZ

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:

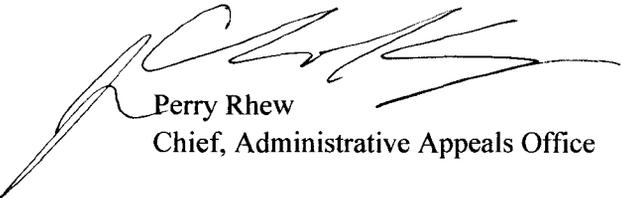


INSTRUCTIONS:

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 Field Office Director, Phoenix, Arizona denied the Application for Certificate of Citizenship (Form N-600) and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born in Mexico, on February 25, 1970. The applicant's parents, [REDACTED] were not married at the time of her birth. The applicant's mother was born in the United States on April 1, 1926. 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 field office director found that the applicant failed to establish that her mother had the requisite period of residence in United States. Accordingly, the field office director denied the Form N-600. *See Decision of the Field Office Director*, dated October 10, 2007. On appeal, the applicant contends through counsel that the applicant has additional evidence establishing that her mother resided in the United States for the requisite period in the form of an affidavit from her mother; and the applicant's brother's Certificate of Citizenship obtained on the same basis under which the applicant seeks a Certificate of Citizenship. The applicant contends through counsel that U.S. Citizenship and Immigration Services (USCIS) should be stopped from asserting that the evidence is insufficient in a case in which they have previously approved an application for another sibling.

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) (1970), as in effect at the time of her birth in 1970, 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 February 25, 1970.

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 contends that her mother, [REDACTED] was born in Santa Paula, California on April 1, 1926. *See Form N-600, Application for Certificate of Citizenship*. In support of this contention, the applicant presented a Court Ordered Delayed Registration of Birth, dated November 10, 1987, showing that [REDACTED] was born in Santa Paula, California on April 1, 1926. The applicant presented an affidavit, dated May 4, 1987, from [REDACTED] indicating that, at the age of six, he resided next door to [REDACTED]

and remembers that they had a baby girl on April 1, 1926 named [REDACTED] because they had a party to celebrate the birth. The applicant presented a Certificate of Baptism, dated May 25, 2005, showing that [REDACTED] was baptized on June 1, 1926 in Santa Paula, California. The applicant presented a delayed request for amendment to the Certificate of Baptism, dated October 2 1974, requesting that the certificate reflect that [REDACTED] was born in Santa Paula, California. The applicant presented a Certificate of Birth reflecting that the applicant was born to [REDACTED] who were living in a state of common law marriage, on February 25, 1970 in Mexicali, Baja, California. The applicant presented a Certificate of Marriage, dated October 3, 1986, for her parents reflecting that the applicant's parents were legally married on December 18, 1975 in Morelos, Baja, California, Mexico. On appeal, the applicant also presents an affidavit from her mother, dated November 2, 2007, in which she states that she was born in Santa Paula, California on April 1, 1926. Here, the applicant has shown by a preponderance of the evidence that she meets the first requirement for the automatic acquisition of citizenship through her mother, in that she has presented credible evidence that she was born out-of-wedlock to [REDACTED] on February 25, 1970, in Mexicala, Baja, California, Mexico and that [REDACTED] is a U.S. citizen by birth. *See Court Ordered Delayed Registration of Birth; Affidavit of [REDACTED] Certificate of Baptism for [REDACTED]s; Request for Amendment to Certificate of Baptism; Birth Certificate for [REDACTED] Tapia; Certificate of Marriage for [REDACTED] Lemus and [REDACTED] and Affidavit from [REDACTED]*

The applicant contends that her mother resided in the United States from birth until 1934 when she returned to Mexico and that her mother did not return to the United States until 1987. In support of this contention, the applicant presented the affidavit of [REDACTED] indicating that he remembered the birth of [REDACTED]. The applicant presented a letter, dated April 1987, certifying that [REDACTED] attended school at Miguel Hidalgo School in Campos Angostura Sinaloa, Mexico during the 1934-1935 school year. The applicant presented a response from the United States Bureau of the Census indicating that [REDACTED] was not listed on the April 1, 1930 census records, but that the designated family was found living in the area given. On appeal, the applicant also presents an affidavit from her mother, dated November 2, 2007, in which she states that she resided at [REDACTED] from her birth until 1934 when her parents took her to Mexico and that she did not return to the United States until 1987. *See Affidavit of [REDACTED] Certificate of Education in Mexico; Response Bureau of the Census; Affidavit from [REDACTED]* Here, the applicant has failed to show by a preponderance of the evidence that she meets the second requirement for the automatic acquisition of citizenship through her mother, in that she has failed to present sufficient credible evidence that her mother resided in the United States for a continuous period of one year prior to her birth in 1970.

First, the AAO notes that, while [REDACTED] indicated that he came to live in the same area as the applicant's mother when he was five years old and resided there for two years, he did not state that he recalled the applicant's mother residing in the area after her birth; he only stated that he recalled the applicant's mother's birth. Second, although the evidence clearly reflects that the applicant's mother was present in Mexico in 1934 to 1935, it does not reflect that the applicant's mother resided in the United States prior to those dates. The applicant's mother's affidavit lacks detail and conflicts with the response from the U.S. Bureau of the Census which indicates that,

during the April 1, 1930 census, the applicant's mother was not a part of the household in which [REDACTED] resided in California and there are no other independent sources from which the applicant can establish her mother's physical presence in the United States. Although the evidence shows that the applicant's mother was born in the United States, the evidence in the record is insufficient to show that the applicant's mother was physically present in the United States for a continuous period of one year before the applicant's birth in 1970.

On appeal, counsel asserts that the applicant's brother was granted a Certificate of Citizenship based upon presentation of the same evidence and testimony as submitted by the applicant. The record indicates, however, that different statutory requirements governed the application of the applicant's brother who was born in 1950. The record reflects that the applicant's brother obtained his Certificate of Citizenship under sections 201(c) and 205 of the Nationality Act of 1940 (the 1940 Act), 8 U.S.C. §§ 601(c) and 605 (1940), which require only that the mother of an applicant born out-of-wedlock and outside the United States need only reside in the United States at some point in time prior to the birth of the child. As such, the applicant's brother proved that the applicant's mother resided in the United States for at least two months after her birth in the United States, as reflected by her Certificate of Baptism.

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 her mother resided in the United States for the requisite period. Accordingly, the applicant is not eligible for citizenship under section 309(c) of the Act, and the appeal will be dismissed.

ORDER: The appeal is dismissed.