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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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E₂

DATE: **MAY 08 2011**

Office: ALBANY, NY

FILE: 

IN RE:

Applicant: 

APPLICATION:

Application for Certificate of Citizenship under Section 309(c) of the Immigration and Nationality Act; 8 U.S.C. § 1409(c) (1984).

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.

Thank you,


Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Albany, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant was born on September 9, 1984 in the United Kingdom. The applicant's mother was born in Chicago, Illinois on June 5, 1962. The applicant's parents were married in 1989. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship through his mother.

The field office director found that the applicant did not derive U.S. citizenship under section 309(c) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1409(c) (1984), because, in part, he had failed to establish that his mother had the requisite one year of continuous physical presence in the United States prior to his birth.

On appeal, the applicant, through counsel, maintains that his mother was present in the United States for a continuous period of at least one year. *See* Appeal Brief and Statement of the Applicant on the 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 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 1984. Section 309(c) of the Act is therefore applicable to his 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 record in this case contains, in relevant part, the applicant's birth certificate, his parents' marriage certificate, the applicant's mother's birth certificates, and affidavits executed by the applicant's maternal aunts and his mother's family friends.

The AAO finds that the applicant has establish, by a preponderance of the evidence, that his mother was present in the United States or one of its outlying possessions for a continuous period of one year as required by section 309(c) of the Act.

The AAO notes the Board of Immigration Appeals finding in *Matter of Tijerina-Villarreal*, 13 I&N Dec. 327, 331 (BIA 1969), that:

[W]here a claim of derivative citizenship has reasonable support, it cannot be rejected arbitrarily. However, when good reasons appear for rejecting such a claim such as the interest of witnesses and important discrepancies, then the special inquiry officer need not accept the evidence proffered by the claimant. (Citations omitted.)

The affidavits submitted by the applicant are consistent, based on personal knowledge and sufficiently detailed to support the claim that the applicant's mother was physically present in the United States from birth until 1964, a period of more than one year.¹ The applicant's aunts' affidavits include additional details about the applicant's mother's departure from the United States, specifically her short residence in Canada before returning to the United Kingdom. This additional detail does not amount to an inconsistency between their affidavits and those of the applicant's mother's family friends.

The burden of proof in citizenship cases is on the claimant to establish the claimed citizenship by a preponderance of the evidence. *See* Section 341 of the Act, 8 U.S.C. § 1452; 8 CFR § 341.2. The applicant has met his burden of proof, and his appeal will be sustained. The matter will be returned to the Albany Field Office for issuance of a certificate of citizenship.

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

¹ The record further indicates that the applicant's mother returned to the United States in 1972, although it is unclear how long she was present in the United States at that time.