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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

[redacted]

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DATE: MAY 10 2011 Office: EL PASO, TX FILE: [redacted]

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:

SELF-REPRESENTED

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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, El Paso, Texas, and came before the Administrative Appeals Office (AAO) on appeal. The appeal was dismissed on January 5, 2011. The applicant requests reopening and reconsideration of the AAO's decision. The applicant's motion to reopen will be granted and the prior decision of the AAO will be affirmed.

The record reflects that the applicant was born on June 11, 1959 in Mexico to 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 pursuant to section 309 of the Act, 8 U.S.C. § 1409(c).

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 before the AAO included, 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. The applicant's instant motion includes evidence that her uncle, the applicant's mother's brother, was confirmed on December 15, 1926 at in Texas. The motion is also accompanied by a letter from stating that there were no documents pertaining to the applicant's mother as well as a social security earnings statement indicating $35.29 and $42.50 in employment income for the years 1954 and 1955, respectively.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). The applicant's motion includes new evidence relevant to her claim that her mother was physically present in the United States for a continuous one-year period. The applicant's motion is therefore granted.[1]

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[1] A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. *See* 8 C.F.R. § 103.5(a). A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). The applicant's motion does not meet the requirements of a motion to reconsider.

Nevertheless, the evidence in the record, including the applicant's uncle's confirmation in 1926 and the applicant's mother's employment in 1954 and 1955, is insufficient to establish that the applicant's mother was present in the United States for a "continuous" period of one year prior to 1959 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. Accordingly, the prior decision of the AAO will be affirmed and the application will remain denied.

ORDER: The January 5, 2011 decision of the Administrative Appeals Office is affirmed. The application remains denied.