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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: OCT 06 2011 Office: EL PASO, TX FILE: [redacted]

IN RE: [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:

[redacted]

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 for Certificate of Citizenship (Form N-600) was denied by the Field Office Director, El Paso, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born in Ciudad Juarez, Juarez, Chihuahua, Mexico, on March 2, 1958. The applicant's mother, , was not married at the time of her birth. The applicant's mother was a *U.S. citizen by birth in El Paso, Texas.*[1] *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 determined that that the applicant was ineligible for a certificate of citizenship because she had failed to establish that she had acquired citizenship through her mother under section 309(c) of the Act. The application was denied accordingly. *See Decision of the Field Office Director*, dated September 9, 2010. On appeal, counsel submits a baptismal certificate for the applicant's mother and requests that the prior decision be reconsidered. *See Form I-290B,* dated August 26, 2010.

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). Since 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 1958, 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 March 2, 1958. The applicant contends that her mother, , was born in the United States and resided in the United States from her birth in 1920 until 1936. *See Form N-600, Application for Certificate of Citizenship.*

In support of these contentions, the applicant presented a Mexican Birth Certificate indicating that she was born to on March 2, 1958 in Mexico. *See Birth Certificate for* , registered October 21, 1958, in Mexico. The applicant presented an Birth Certificate indicating that birth in on May 10, 1920 was not registered until December 9, 1953. *See Certificate of Birth,* issued February 4, 1954. The applicant presented a Certificate of Baptism reflecting that the applicant's mother was baptized in

[1] The applicant's mother passed away on November 1, 1991.

Texas on July 22, 1921 and was born in [redacted] on May 10, 1920. *See Certificate of Baptism*, issued June 2, 2010. The applicant also presents a copy of a Manifest for the applicant's maternal grandfather, reflecting his entry into the United States on May 9, 1928. 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 1958.

While the Certificate of Baptism indicates that the applicant's mother was present in the United States in 1921, there is no other evidence to support a finding that she was continuously physically present in the United States from her birth until baptism or that there was any physical presence in the United States after her baptism. 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 1958.

On appeal, counsel asserts that the applicant's sister was granted a Certificate of Citizenship and that the evidence in support of the applicant's sister's application is sufficient to establish the applicant's citizenship. The record indicates, however, that different statutory requirements governed the application of the applicant's sister. The record reflects that the applicant's sister obtained her 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 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.

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 a certificate of citizenship under section 309(c) of the Act, and the appeal will be dismissed.

ORDER: The appeal is dismissed.