



U.S. Citizenship  
and Immigration  
Services

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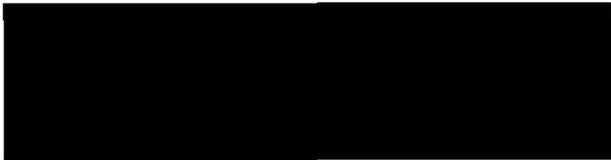
Date: **OCT 16 2012** Office: LAS VEGAS, NV

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).

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, Las Vegas, Nevada (the director), and is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded to the director for action consistent with this decision.

The record reflects that the applicant was born on November 23, 1960 in Mexico. The applicant's [REDACTED] was born in the United States on September 8, 1926. The applicant's father's name does not appear on his birth certificate. The applicant was born out of wedlock. He seeks a certificate of citizenship claiming that he acquired U.S. citizenship at birth through his mother.

The director found that the applicant did not acquire U.S. citizenship at birth under section 309(c) of the Act, 8 U.S.C. § 1409(c), because he could not establish that his mother was physically present in the United States for a continuous period of one year prior to the applicant's birth. *See Director's Decision*, dated June 1, 2012.

The applicant, through counsel, maintains that his mother was present in the United States from birth until about the age of 15, in 1941. In support of this claim, the applicant cites to his mother's statement as well as evidence that she was baptized in the United States in 1929. Counsel explains that the applicant's mother did not attend school as a child and therefore no school records exist to corroborate her claim. Lastly, the applicant submits a copy of his U.S. passport which, according to counsel, is conclusive evidence of his U.S. citizenship.

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 (9<sup>th</sup> Cir. 2001) (internal citation omitted). The applicant in the present matter was born in 1960. Because he was born out of wedlock, section 309(c) of the Act applies to his case.

Section 309(c) of the Act, 8 U.S.C. § 1409(c), 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 contains, in relevant part, a copy of the applicant's mother's birth and baptismal certificates, and a copy of the applicant's U.S. passport. The record also contains a sworn statement executed by the applicant's mother. On appeal, the applicant further submits a letter from the applicant's family church stating that its baptismal register indicates that two of the family's children were baptized on November 12, 1929.

The record does not contain sufficient evidence to establish that the applicant's mother was physically present in the United States for a continuous period of one year prior to the applicant's

birth. The AAO notes that the only evidence submitted in this regard is the applicant's mother's birth and baptismal certificates, and her declaration.

Nevertheless, the record contains a copy of a U.S. passport issued to the applicant by the U.S. Department of State on October 3, 2011. In *Matter of Villanueva*, 19 I&N Dec. 101 (BIA 1984), the Board of Immigration Appeals held that a valid U.S. passport is conclusive proof of U.S. citizenship. Specifically, the Board held in *Matter of Villanueva* that:

unless void on its face, a valid United States passport issued to an individual as a citizen of the United States is not subject to collateral attack in administrative immigration proceedings but constitutes conclusive proof of such person's United States citizenship.

Where, as here, the applicant has failed to establish statutory eligibility for U.S. citizenship, a Certificate of Citizenship cannot be issued. The USCIS Adjudicator's Field Manual at § 71.1(e)(1) states:

An unexpired United States passport issued for 5 or 10 years is now considered prima facie evidence of U.S. citizenship. Because it does not provide the actual basis upon which citizenship was acquired or derived, the submission of additional documentation may be required or the passport file may be requested. If after review there are differences or discrepancies between the USCIS information and the Passport Office records which would indicate that the application should not be approved, no action should be taken until the Passport Office has an opportunity to review and decide whether to revoke the passport.

The matter must therefore be remanded to the director to request that the Passport Office review and decide whether to revoke the applicant's passport. The director shall issue a new decision once the Passport Office's review is completed and, if adverse to the applicant, certify the decision to the AAO for review.

**ORDER:** The matter is remanded to the director for action consistent with this decision. The director shall issue a new decision once the Passport Office's review is completed and, if adverse to the applicant, certify the decision to the AAO for review.