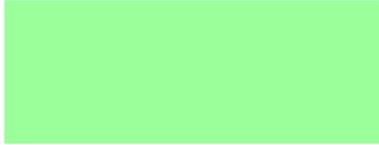


(b)(6)

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

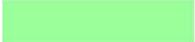


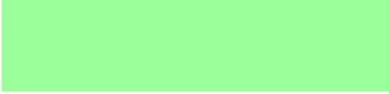
U.S. Citizenship
and Immigration
Services



DATE: **AUG 12 2013**

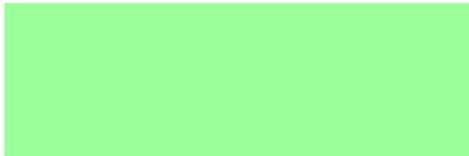
OFFICE: HARLINGEN, TX

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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "R. Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Form N-600, Application for Certificate of Citizenship (Form N-600) was denied by the Field Office Director, Harlingen, Texas (the director). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant was born in Mexico on [REDACTED], to unmarried parents. The applicant's mother was born in the United States on May 10, 1961. His father is not a U.S. citizen. 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 he acquired U.S. citizenship at birth through his mother.

In a decision dated February 12, 2013, the director determined that the applicant had submitted insufficient evidence to establish that, prior to his birth, his mother was physically present in the United States for a continuous period of one year, as required by section 309(c) of the Act. The application was denied accordingly.

Through counsel, the applicant asserts on appeal that evidence in the record establishes that his mother met the U.S. physical presence requirements set forth in section 309(c) of the Act. In support of the assertions counsel submits school record evidence and an affidavit from the applicant's mother. The record also contains an affidavit from the applicant's maternal aunt.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

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 in 1979, section 309(c) of the Act, 8 U.S.C. § 1409(c) applies to his case.

Section 309(c) of the Act provides, in relevant part that:

[a] person born, after December 24, 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 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.

In the present matter, the applicant must establish that his [REDACTED] mother was physically present in the United States for a continuous period of one year before his birth on [REDACTED]

Because the applicant was born abroad, he is presumed to be an alien and bears the burden of establishing his claim to U.S. citizenship by a preponderance of credible evidence. *See Matter of Baires-Larios*, 24 I&N Dec. 467, 468 (BIA 2008). *See also*, 8 C.F.R. § 341.2(c) (the burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence.) The "preponderance of the evidence" standard requires that the record demonstrate that

the applicant's claim is "probably true," based on the specific facts of each case. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (citing *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989)). Even where some doubt remains, an applicant will meet this standard if she or he submits relevant, probative and credible evidence that the claim is "more likely than not" or "probably" true. *Id.* (citing *INS v. Cardoza-Fonseca*, 480 U.S. 421, 431 (1987)).

In order to establish that his mother was physically present in the United States for a continuous period of one year prior to his birth, the applicant submits a copy of his mother's birth certificate, filed on May 29, 1961, reflecting that she was born in El Paso County, Texas on [REDACTED]

The record also contains a June 29, 2011 letter from the [REDACTED] certifying that their records indicate that the applicant's mother attended [REDACTED] during the 1969-1970 and 1970-1971 school years, and that her place of residence during that period was: [REDACTED]

The applicant's mother writes, in pertinent part, in a January 3, 2013 statement that she was born in [REDACTED] on [REDACTED], and that she attended [REDACTED] until her father passed away in 1970, and while she lived with her mother for another year in 1971. She states that the State then "took custody of us," and she lived with a family and went to another school "for one more year." She subsequently lived with her aunt, [REDACTED] and attended [REDACTED] until 1973. She states that her mother then "took us all to Juarez, Mexico to live," however, she moved back to El Paso, Texas with her future husband when she was 13 years old, and lived with him until 1977, when she became pregnant with her oldest son. She returned to Juarez, Mexico again when the applicant was born in 1979.

The applicant's maternal aunt, [REDACTED], writes in a March 19, 2012 statement that she was born in El Paso Texas on [REDACTED]; that she attended first grade "at the same school" where the applicant's mother attended first and second grade; and that she lived in El Paso, Texas with the applicant's mother from the time of her birth until she was approximately eight years old. A copy of [REDACTED] Texas birth certificate, filed May 21, 1963, is also contained in the record.

Upon review, the AAO finds that the applicant has failed to establish by a preponderance of the evidence that his U.S. citizen mother was physically present in the United States for a continuous period of one year prior to his birth on [REDACTED]. Notably, the record lacks actual school attendance and transcript evidence for the applicant's mother, and although the [REDACTED] certifies that records indicate the applicant's mother attended [REDACTED] during the 1969-1970 and 1970-1971 school periods, the school district fails to specify her actual periods of school attendance. The school district letter also fails to demonstrate that the applicant's mother's residence in El Paso was independently verified by the school district. Moreover, the record contains no other academic, residence, or documentary evidence to establish the applicant's mother attended school in Texas, or that she resided in Texas during any of the claimed time periods.

In ascertaining the evidentiary weight of affidavits, the Service must determine the basis for the affiant's knowledge of the information to which she or he is attesting; and whether the statement is

plausible, credible, and consistent both internally and with the other evidence of record. *Matter of E-M-*, 20 I&N Dec. 77 (Comm. 1989). In the present matter, the statements by the applicant's mother and maternal aunt have diminished evidentiary weight, in that they lack material detail with regard to the exact dates or locations of the applicant's mother's physical presence in the United States. They are also uncorroborated by independent evidence. It is additionally noted that the applicant's maternal aunt's birth certificate states that at the time of her birth, her mother's (the applicant's maternal grandmother) "usual residence" was [REDACTED]. The birth certificate therefore contradicts assertions that the applicant's mother resided with her family in El Paso, Texas from birth until about 1971.

The regulation at 8 C.F.R. § 341.2(c) states that the burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. Here, the applicant has failed to establish by a preponderance of the evidence that his mother was continuously physically present in the United States for the required period set forth in section 309(c) of the Act. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.