



U.S. Citizenship  
and Immigration  
Services

(b)(6)

[Redacted]

Date: Office: MIAMI, FL

JUN 21 2013

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:

[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.

Thank you

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The application was denied by the Field Office Director, Miami, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The field office director's decision shall be withdrawn and the matter remanded for entry of a new decision.

The record reflects that the applicant was born on October 21, 1979 in Havana, Cuba. The applicant's mother, [REDACTED] was born in the United States on November 25, 1958. The applicant's father is [REDACTED]. The applicant's parents were never married to each other. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship at birth through his mother.

The field office director found that the applicant did not acquire U.S. citizenship at birth under section 301(g) of the Act, 8 U.S.C. § 1401(g), because he could not establish that his mother was physically present in the United States as required. *See Director's Decision*, dated Nov. 5, 2012.

The applicant, through counsel, maintains that his citizenship claim arises under section 309(c) of the Act, 8 U.S.C. § 1409(c). The applicant states that he is the out of wedlock child of a U.S. citizen, who was physically present in the United States for the period required in section 309(c) of the Act.

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 1979. 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 applicant's mother's birth certificate establishes that she was physically present in the United States, at birth, in 1958. As the field office director erroneously considered the applicant's eligibility for U.S. citizenship under section 301(g) of the Act, and did not evaluate the evidence to determine whether the applicant's mother was physically present in the United States for a continuous period of one year as is required by section 309(c) of the Act, his decision must be withdrawn and the matter remanded for entry of a new decision.

Upon remand, the field office director must provide the applicant an opportunity to submit evidence that he fulfilled the requirements of section 309(c) of the Act before issuing a new decision. If the applicant is found ineligible for citizenship under section 309(c) of the Act, the decision shall be certified to the AAO for review.

**ORDER:** The field office director's decision is withdrawn and the matter remanded for entry of a new decision which, if adverse to the applicant, shall be certified to the AAO for review.