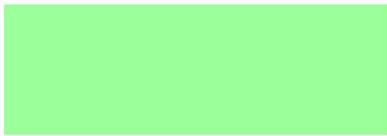


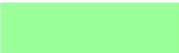


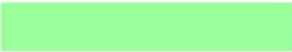
U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **SEP 23 2013** Office: JACKSONVILLE, FL

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 (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,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The appeal was denied by the Field Office Director (the director), Jacksonville, Florida, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born in Canada on August 10, 1987. The applicant was born out of wedlock. The applicant's mother, [REDACTED], was born in West Virginia on April 5, 1964. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship at birth through his mother.

The director denied the applicant's citizenship claim upon finding, in relevant part, that he had failed to establish that his mother was continuously present in the United States for one year as required by section 309(c) of the Act, 8 U.S.C. § 1409(c).¹

On appeal, the applicant, through his representative, maintains that his mother lived in the United States from birth, in 1964, until 1976. *See* Appeal Brief. The applicant explains that his attempts to obtain documentary evidence in support of his claim were unsuccessful. *Id.* at 5-6.

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 (9th Cir. 2001) (internal citation omitted). The applicant in the present matter was born in 1987. 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 1964. The affidavits submitted, executed by the applicant's mother, grandmother and maternal aunt, indicate that the applicant's mother resided in the United States from birth until 1976. The applicant submitted photographs of her mother taken when her mother was visiting the United States. There is no documentary evidence submitted, except for a letter explaining that the applicant's mother's elementary school records were destroyed.

¹ The director also noted that the applicant had not provided evidence of a name change. The AAO finds that the applicant's use of the surname [REDACTED] as opposed to [REDACTED] was appropriately explained and will not require evidence of a court-ordered name change.

The Board of Immigration Appeals held in *Matter of Tijerina-Villarreal*, 13 I&N Dec. 327, 331 (BIA 1969), that:

[W]here a claim of derivative citizenship has reasonable support, it cannot be rejected arbitrarily. However, when good reasons appear for rejecting such a claim such as the interest of witnesses and important discrepancies, then the special inquiry officer need not accept the evidence proffered by the claimant. (Citations omitted.)

The AAO notes the applicant's troubled childhood and his explanations regarding the lack of documentary evidence in support of his claim. Nevertheless, the affidavits submitted evidence that he is in contact with his mother and grandmother. There is no explanation provided why the applicant's grandmother cannot obtain income tax, employment, health, census or housing records. The information provided in the affidavits of the applicant's mother and grandmother is consistent, but the applicant's aunt's affidavit contains corrections with respect to key dates and information. Good reason appears for rejecting the applicant's claim and requiring objective, documentary evidence of the applicant's mother's continuous presence in the United States prior to 1987.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.