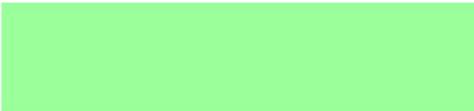


(b)(6)

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

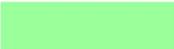


U.S. Citizenship
and Immigration
Services

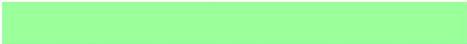


DATE: DEC 17 2014

OFFICE: DALLAS, TX

FILE: 

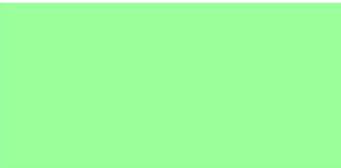
IN RE:

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:

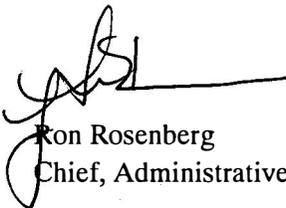


INSTRUCTIONS:

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.

Thank you,



Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director of the Dallas, Texas Field Office (the director) denied the Application for Certificate of Citizenship (Form N-600) and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the matter returned to the director for issuance of a certificate of citizenship to the applicant.

Pertinent Facts and Procedural History

The record reflects that the applicant was born in Mexico on [REDACTED] to unmarried parents, and her parents never married. The applicant's mother was born in the United States on [REDACTED]. Her 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 she acquired U.S. citizenship at birth through her mother.

In a decision dated October 16, 2013, the director determined that the applicant failed to establish, by a preponderance of the evidence, that her mother was physically present in the United States for a continuous period of one year prior to her birth. The application was denied accordingly.¹ Through counsel, the applicant asserts, in pertinent part on appeal, that the record establishes, by a preponderance of the evidence, that her mother met the U.S. physical presence requirements set forth in section 309(c) of the Act. To support her assertions the applicant submits birth certificate, baptism certificate, and affidavit evidence.

We conduct appellate review on a *de novo* basis.

Applicable Law

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 to a U.S. citizen mother, section 309(c) of the Act applies to her case.²

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 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.

¹ The director's decision refers to former section 301(a)(7) of the Act, 8 U.S.C. §1401(a)(7) as a basis for the applicant's citizenship claim; however, analysis of her claim was done pursuant to acquisition of citizenship conditions contained in section 309(c) of the Act.

² The director did not dispute that the applicant was born out of wedlock.

Because the applicant was born abroad, she is presumed to be an alien and bears the burden of establishing her claim to U.S. citizenship by a preponderance of credible evidence. 8 C.F.R. § 341.2(c). See also, *Matter of Baires-Larios*, 24 I&N Dec. 467, 468 (BIA 2008). The “preponderance of the evidence” standard requires that the record demonstrate that an 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’r. 1989)).

Analysis

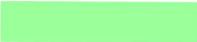
Mother’s U.S. Citizenship

To establish that her mother is a U.S. citizen, the applicant submits a copy of her mother’s birth certificate, issued on May 27, 2004, reflecting that she was born in [REDACTED] Texas. The Board of Immigration Appeals addressed the evidentiary weight to be given to a delayed birth certificate in *Matter of Serna*, 16 I&N Dec. 643, 645 (BIA 1978), indicating that each case is “decided on its own facts with regard to the sufficiency of the evidence presented as to the petitioner’s birthplace” and that evidentiary value is rebutted by contradictory evidence. In the present matter, evidence in the record corroborates the claim that the applicant’s mother was born in the United States. A certificate of baptism reflects that the applicant’s mother was baptized at the [REDACTED] Texas on [REDACTED]. The record also contains birth certificates for two of the applicant’s maternal aunts, reflecting that the applicant’s mother’s sister, [REDACTED] was born in [REDACTED] Texas on [REDACTED] and her birth was registered in [REDACTED] on [REDACTED]. In addition the record contains a birth certificate for the applicant’s mother’s sister, [REDACTED] reflecting that she was born in [REDACTED] Texas on [REDACTED] and her birth was registered in the county on [REDACTED]. In addition, a baptism certificate reflects that [REDACTED] was baptized at the [REDACTED] Texas on [REDACTED]. The applicant therefore established her mother’s birth in the United States.

Physical Presence in the United States

The record also establishes, by a preponderance of the evidence, 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 on [REDACTED]. The applicant’s mother and maternal aunts, [REDACTED] state, in pertinent part, in their March 2012 affidavits that their parents met while working in the fields in [REDACTED] Texas; their mother had 12 children, five born in the United States; [REDACTED] was born in Texas on [REDACTED] the applicant’s mother was born in Texas on [REDACTED] [REDACTED] was born in Texas on [REDACTED] and the three sisters lived in Texas with their parents until about 1954, when their mother was deported to Mexico and they left with her.³

³ The applicant’s mother states further in her affidavit that she returned to the United States to work in the fields near [REDACTED] Texas when she was about 12 years old; however, the record contains no other evidence to corroborate this statement.



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'r. 1989). In the present matter, the statements by the applicant's mother and maternal aunts regarding their family's physical presence in the United States in the early 1950s are corroborated by independent birth and baptismal certificate evidence. The evidence demonstrates that it is "probably true" that the applicant's mother lived continuously with her family in Texas for at least a year after her birth in [REDACTED]. Accordingly, the applicant has established that the conditions for acquisition of U.S. citizenship under section 309(c) of the Act have been met. The appeal will therefore be sustained.

Conclusion

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 been met.

ORDER: The appeal is sustained. The matter is returned to the director for issuance of a certificate of citizenship to the applicant.