



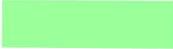
U.S. Citizenship  
and Immigration  
Services

(b)(6)

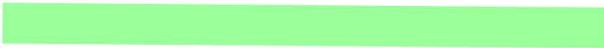


Date: **NOV 19 2014**

Office: HOUSTON, TX

FILE: 

IN RE:

Applicant: 

APPLICATION: Application for Certificate of Citizenship under Section 309 of the Immigration and Nationality Act; 8 U.S.C. § 1409

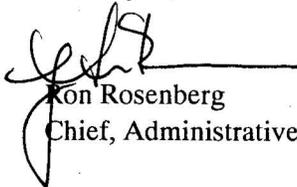
ON BEHALF OF APPLICANT:



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 Houston, 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 The director's decision will be withdrawn and the matter remanded for entry of a new decision.

*Pertinent Facts and Procedural History*

The applicant was born out of wedlock in Mexico on July [REDACTED]. His mother, [REDACTED] was born in Texas on June [REDACTED]. The applicant's parents were married on August [REDACTED] subsequent to the applicant's birth. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship at birth through his mother.

The director denied the application upon finding that the applicant could not establish that his mother was physically present in the United States for ten years prior to his birth as required by former section 301(a)(7) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(a)(7)(1972). *See Director's Decision*, dated April 2, 2014.

On appeal, the applicant submits additional declarations in support of his claim that his mother was physically present in the United States starting in 1972.

*Applicable Law*

The AAO reviews these proceedings *de novo*. 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).

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 1972, prior to his parents' marriage in 1978. Thus, the applicant was born out of wedlock and section 309(c) of the Act is applicable to his case.

Section 309(c) of the Act states, in pertinent 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 mother had previously been physically present in the United States or one of its outlying possessions for a continuous period of one year.

*Remand*

The director considered the application under former section 301(a)(7) of the Act, and denied it upon finding that the applicant could not establish that his mother was physically present in the United States for ten years prior to 1972, five years of which were after 1965 (the applicant's mother's 14<sup>th</sup> birthday).

As previously noted, the applicant was born out of wedlock and section 309(c) of the Act is applicable to his case. Under section 309(c) of the Act, the applicant must demonstrate that his mother was continuously present in the United States for a period of at least one year prior to the applicant's birth. The matter must be remanded for the director to consider the applicant's eligibility for U.S. citizenship under section 309(c) of the Act. The director will then issue a new decision which, if adverse to the applicant, shall be certified to the AAO for review.

**ORDER:** The 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.