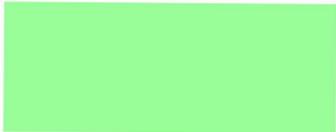




U.S. Citizenship
and Immigration
Services

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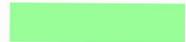


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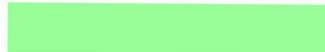
Office: IMPERIAL, CA

FILE:



IN RE:

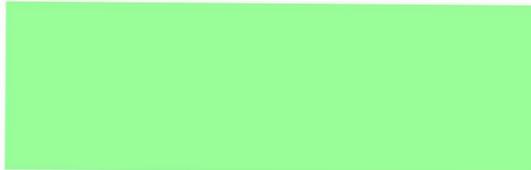
Applicant:



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 Imperial, California Field Support 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 The director's decision will be withdrawn and matter will be remanded for entry of a new decision.

Pertinent Facts and Procedural History

The applicant was born out of wedlock in Mexico on [REDACTED]. The applicant's mother, [REDACTED] was born in Mexico on [REDACTED] but acquired U.S. citizenship at birth through her father, the applicant's maternal grandfather. The applicant's father, [REDACTED] is not a U.S. citizen. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship at birth through his mother.

The director found that the applicant did not acquire U.S. citizenship at birth because he could not establish that his mother was physically present in the United States as required by section 301(g) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(g).

On appeal, the applicant maintains that he submitted sufficient evidence of his mother's physical presence in the United States. *See* Appeal Brief at 3-5.

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. 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 1986. Section 301(g) of the Act is applicable to this case and stated, in pertinent part, that the following shall be nationals and citizens of the United States at birth:

[A] person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years: *Provided*, That any periods of honorable service in the Armed Forces of the United States by such citizen parent may be included in computing the physical presence requirements of this paragraph.¹

¹The substantive requirements of section 301(g) of the Act were amended with the enactment of the Act of November 14, 1986, Pub. L. 99-653, 100 Stat. 3655. Before November 14, 1986, section 301(g) of the Act, like its predecessor former section 301(a)(7) of the Act required ten years of physical presence in the United States, five of which were after the parent's fourteenth birthday. *See* Act of October 10, 1978, Pub. L. 95-432, 92 Stat. 1046.

The applicant indicates, and the record confirms, that his parents were not married. The applicable law for transmission of U.S. citizenship by a child born out wedlock is section 309(c) of the Act, 8 U.S.C. § 1409(c), which 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 and Conclusion

We review these proceedings *de novo*.

As noted above, the director found that the applicant did not acquire U.S. citizenship at birth because he could not establish that his mother was physically present in the United States as required by section 301(g) of Act. As also noted, the record indicates that the applicant's parents were not married to each other when the applicant was born. See Affidavit of [REDACTED] [REDACTED] *see also* Form N-600, Application for Certificate of Citizenship. Because the applicant was born out of wedlock, section 309(c) of the Act is applicable to this case.

As the director erroneously considered the applicant's eligibility for U.S. citizenship under section 301(g) of the Act, her decision must be withdrawn and the matter remanded for entry of a new decision. The director shall determine the applicant's eligibility for a certificate of citizenship under section 309(c) of the Act. Specifically, the director shall consider whether the applicant's mother was physically present in the United States for a continuous period of one year and then enter a new decision which, if adverse to the applicant, shall be certified to the AAO for review.

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