



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 18288824

Date: FEB. 28, 2022

Appeal of Dallas, Texas Field Office Decision

Form N-600, Application for Certificate of Citizenship

The Applicant seeks a Certificate of Citizenship to reflect that he derived U.S. citizenship from his mother under section 309(c) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1409(c).

The Director of the Dallas, Texas Field Office denied the Form N-600, concluding that the Applicant had not shown that he acquired U.S. citizenship at birth from his U.S. citizen mother because she relinquished custody of him shortly after his birth, he was adopted by two Canadian citizen parents, and he did not meet his U.S. citizen birth mother until after he was 21 years of age

On appeal, the Applicant states that the Director's decision was erroneous because there is no statutory basis for the denial under section 309(c) of the Act conditions.

Because the Applicant was born abroad, he is presumed to be a foreign national and bears the burden of establishing his claim to U.S. citizenship by a preponderance of credible evidence. *Matter of Baires*, 24 I&N Dec. 467, 468 (BIA 2008). Under the preponderance of the evidence standard, the Applicant must demonstrate that his claim is "probably true," or "more likely than not." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

Upon *de novo* review, we will remand the matter for proceedings consistent with this decision.

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, section 309(c) of the Act, 8 U.S.C. § 1409(c) (1957), as in effect at the time of his birth in 1975, applies to his case.

Section 309(c) of the Act provided, in relevant part:

[A] person born, on or after [December 24, 1952], outside the United States 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.

The record shows that the Applicant was born out of wedlock in Canada in [] 1975, and he was adopted two days later by two Canadian citizen parents.

The Director denied the Form N-600, finding that the Applicant was not eligible for a Certificate of Citizenship because the Applicant's mother relinquished custody of him shortly after birth and he did not meet her until after the Applicant was 21 years of age. However, the Director's decision does not cite to any statute or regulation to support his finding that the Applicant could not have derived U.S. citizenship at birth if the mother subsequently relinquished custody of him and if the Applicant did not meet her while he was under 21 years of age. Specifically, these requirements do not appear as conditions at section 309(c) of the Act, the statute under which the Applicant seeks approval of his Form N-600.

Because the Director's decision applied conditions that do not relate to whether or not the Applicant automatically acquired U.S. citizenship under section 309(c) of the Act conditions, we are returning the matter to the Director to determine whether or not the Applicant has satisfied those requirements.

ORDER: The decision of the Director is withdrawn. The matter is remanded for further proceedings consistent with the foregoing analysis.