



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

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

In Re: 22082148

Date: AUG. 16, 2022

Appeal of Tucson, Arizona Field Office Decision

Form N-600, Application for Certificate of Citizenship

The Applicant seeks a Certificate of Citizenship to reflect that she acquired U.S. citizenship at birth from a parent under the Nationality Act of 1940 (the 1940 Act), sections 201(g) and 205, 8 U.S.C. §§ 601(g) and 605, *repealed by* Immigration and Nationality Act, ch. 477, title IV, § 403(a)(42), Pub. L. No. 82-414, 66 Stat. 163, eff. Dec. 24, 1952 (June 27, 1952). Under this statute, in the case of an individual claiming to be a U.S. citizen at birth who was born to an unmarried U.S. citizen mother, the mother must have resided in the United States before the individual's birth.

The Director of the Tucson, Arizona Field Office denied the Form N-600, Application for Certificate of Citizenship (Form N-600), concluding that the Applicant could not have acquired U.S. citizenship from her mother because she did not show that the mother had satisfied the physical presence in the United States conditions under the Nationality Act of 1940.<sup>1</sup> The Director also noted that the Applicant's evidence showed that the mother became a lawful permanent resident of the United States in August 2007, after the Applicant had become a naturalized U.S. citizen in October 1993.

The matter is now before us on appeal. On appeal, the Applicant claims, in pertinent part, that it has been hard to find evidence of her mother's physical presence in the United States and submits letters from relatives and some photographs.

Upon *de novo* review, we will dismiss the appeal.

**I. LAW**

The record reflects that the Applicant was born in Mexico on [ ] 1945, to unmarried parents. The Applicant immigrated to the United States in 1973 based on a marital relationship to her then-lawful permanent resident spouse. She subsequently naturalized in October 1993, and has a U.S. passport based on her status as a naturalized citizen. Nevertheless, the Applicant seeks a Certificate of Citizenship reflecting that she acquired U.S. citizenship at birth from her mother pursuant to sections 201 and 205 of the 1940 Act.

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<sup>1</sup> Although the Director evaluated the mother's periods of *physical presence* within the United States, as will be discussed, section 205 of the 1940 Act applies to the Applicant in this case and requires that her mother have *resided* in the United States at some point prior to the Applicant's birth in 1945.

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, 1029 n.3 (9th Cir. 2001) (internal quotation marks and citation omitted). In this case, the Applicant's citizenship claim falls within the provisions of section 201(g) of the 1940 Act, which stated that an individual born outside of the United States or its outlying possessions would be a citizen or national of the United States if: (1) the individual was born to parents, one of whom was an alien and the other a U.S. citizen, and could demonstrate that the U.S. citizen parent had minimum of 10 years' residence in the United States or its possessions, at least 5 of which were after the age of 16 years; and (2) the individual resided in the United States or its outlying possessions for a period or periods totaling 5 years between the ages of 13 and 21 years.

Because the Applicant claims to have born out of wedlock, and the record is absent evidence that she was legitimated, she must satisfy the requirements of section 205 of the 1940 Act, which provided:

In the absence of such legitimation or adjudication, the child, whether born before or after the effective date of this Act, if the mother had the nationality of the United States at the time of the child's birth, and had previously resided in the United States or one of its outlying possessions, shall be held to have acquired at birth her nationality status.

It is the Applicant's burden to establish the claimed citizenship by a preponderance of the evidence. Section 341(a) of the Act, 8 U.S.C. § 1452(a); 8 C.F.R. § 341.2(c). The "preponderance of the evidence" standard requires that the record demonstrate that the Applicant's claim is "probably true," based on the specific facts of his case. *See 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)).

## II. ANALYSIS

The Applicant has established that she meets at least one requirement for acquisition of citizenship at birth under section 201 of the 1940 Act. Specifically, birth certificate evidence reflects that she was born outside of the United States in 1945. Moreover, because she was born out of wedlock and the record is absent evidence that her father legitimated her, she need only show that her mother resided in the United States at some point prior to the Applicant's birth in 1945.

The Applicant initially claimed on the Form N-600 that she "did not recall" when her mother resided in the United States other than to confirm that her mother resided with the Applicant after becoming a lawful permanent resident from August 2007 until December 2010. Because the Applicant must show that her mother resided in the United States *prior* to the Applicant's birth in 1945, this information does not show that the Applicant's mother satisfied the U.S. residence requirements at section 205 of the Nationality Act of 1940 sometime after the mother's birth in [ ] 1924 and prior to the Applicant's birth in [ ] 1945.

In response to a request for evidence (RFE) of the mother's residence in the United States prior to the Applicant's birth in 1945, the Applicant provided documents relating to her own U.S. citizenship, documents relating to various family members, or documents from outside the relevant period of 1924 to 1945. For example, the Applicant provided census records for 1920 that may relate to her family.

However, because her mother was not born until 1924, they do not show that her mother resided in the United States. Other documents such as her mother's 2007 immigrant visa and a letter issuing her an individual taxpayer identification number from the Internal Revenue Service in July 2007 are similarly outside the relevant period of 1924 to 1945. Consequently, the documents do not show that the Applicant's mother resided in the United States prior to the Applicant's birth in [ ] 1945.

On appeal, the Applicant discusses her memories of her mother in the United States, but this is not relevant as it was outside the required period of residence prior to the Applicant's birth. She also submits two letters from her mother's cousin, R-D-, and her mother's sister, Y-, to support her claim that her mother resided in the United States prior to the Applicant's birth in 1945.<sup>2</sup> R-D- stated in one letter that she was the mother's cousin and that the mother came to the United States when she was 16 or 17 years old to take care of another family member's children. In a second letter, R-D- stated that the Applicant's mother worked for the family in [ ] from 1945 until 1958 and brought her daughter with her. However, the Applicant was born in March 1945, and if the mother was bringing the Applicant to her place of employment in the United States, then this does not show that her mother resided in the United States *prior* to the Applicant's birth. R-D- did not otherwise provide specific dates or corroborating evidence of the mother's initial claimed periods of residence in the United States when the mother was 16 or 17 years of age. The mother's sister, Y-, stated that she remembered when the Applicant's mother used to come to the United States to work while Y- remained in Mexico. However, Y- does not claim to have accompanied her sister to the United States, provide first-hand knowledge or corroborating evidence that the Applicant's mother was actually residing in the United States, and does not provide specific dates regarding the mother's claimed residence in the United States. Consequently, the letters submitted on appeal do not show that the Applicant's mother resided in the United States prior to the Applicant's birth in [ ] 1945.

With respect to the photographs that the Applicant includes on appeal, she claims that the one of a woman standing in front of a car with her back to the camera depicts her mother at her cousins' house in Arizona. According to the Applicant, the other photograph is of her uncle in U.S. military uniform taken when he enlisted and dedicated to her mother in September 1943. However, the photograph of the woman in front of a car does not include any other information that would demonstrate that the individual with her back to the camera was the Applicant's mother or that the mother was in fact residing in the United States on the day the photograph was taken, including any specific date or period of time prior to the Applicant's birth in 1945. In addition, although the photograph of the uncle was inscribed in 1943, there is no evidence that it was mailed to the Applicant's mother in the United States based on her actual residence there prior to 1945, as claimed. Moreover, the Applicant does not claim to have personal knowledge that the photographs were sent to or received by her mother while the mother was residing in the United States prior to 1945. Consequently, the photographs do not show that the Applicant's mother resided in the United States prior to the Applicant's birth in 1945.

Here, the Applicant has not established by a preponderance of the evidence that her mother resided in the United States prior to the Applicant's birth in 1945. Therefore she has not met all of the conditions

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<sup>2</sup> Names withheld to protect the individuals' identities.

for the acquisition of U.S. citizenship pursuant to section 205 of the 1940 Act. For this reason, the Form N-600 may not be approved.

**ORDER:** The appeal is dismissed.