



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

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

In Re: 20772608

Date: JUL. 15, 2022

Appeal of Dallas, Texas Field Office Decision

Form N-600, Application for Certificate of Citizenship

The Applicant, who was born abroad, seeks a Certificate of Citizenship to reflect that that he acquired U.S. citizenship from his U.S. citizen mother pursuant to former section 301(a)(7) of the Immigration and Naturalization Act (the Act), 8 U.S.C. § 1401(g), *amended by* Act of October 10, 1978, Pub. L. No. 95-432, 92 Stat. 1046. The Director of the Dallas, Texas Field Office denied the Form N-600, Application for Certificate of Citizenship, concluding that the evidence was insufficient to establish, as required, that the Applicant's mother had the requisite physical presence in the United States to transmit her U.S. citizenship to the Applicant at birth.¹

On appeal, the Applicant submits a statement and asserts he has established his mother's physical presence for the requisite period. We review the questions in this matter *de novo*. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will dismiss the appeal.

I. LAW

The record reflects that the Applicant was born abroad in Mexico in 1968 to a U.S. citizen mother and a Mexican citizen father who were married to each other. The Applicant seeks a Certificate of Citizenship indicating that he acquired U.S. citizenship at birth from his U.S. citizen mother pursuant to former section 301(a)(7) of the Act.

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).

As the Applicant was born in 1968 to married parents, one of whom was a U.S. citizen, former

¹ Although the Director determined that the Applicant had not established acquisition of U.S. citizenship pursuant to section 301(g) of the Act, at the time of the Applicant's birth in 1968, former section 301(a)(7) of the Act governed the acquisition of U.S. citizenship by children born abroad to one U.S. citizen married to a noncitizen parent. Furthermore, the Director also analyzed whether the Applicant established derivative status pursuant to former section 321 of the Act, 8 U.S.C. § 1432, repealed by Sec. 103(a), title I, Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631 (2000). The Director correctly concluded that it did not apply in the instant case. The Applicant does not contest this issue on appeal and we will not address it here.

section 301(a)(7) of the Act applies. Former section 301(a)(7) of the Act provides, in relevant part, that a child will be a national and citizen of the United States at birth if the child's U.S. citizen parent "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 ten years, at least five of which were after attaining the age of fourteen years."

The term "physically present" refers to the actual time a person is in the United States, regardless of whether they have a residence in the United States. *See* 12 *USCIS Policy Manual* H.2(E)(1), <https://www.uscis.gov/policymanual> (explaining the difference between "residence" and "physical presence" in the context of citizenship proceedings).

As 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).

II. ANALYSIS

The record includes the Applicant's birth certificate demonstrating that he was born in Mexico in [] 1968 to a U.S. citizen mother and a Mexican citizen father; it also contains a marriage certificate showing that J-Q-M-,² the Applicant's U.S. citizen mother and his Mexican citizen father were married in [] 1967, prior to his birth.

The Director determined that the Applicant did not acquire citizenship at birth through his U.S. citizen mother because he had not shown that his mother was physically present in the United States for at least ten years before the Applicant's birth, at least five of which were after his mother's fourteenth birthday in [] 1961.

On appeal, the Applicant provides an additional statement and requests that we reconsider his application for a Certificate of Citizenship. Upon review of the entire record, we find the Applicant has not overcome the Director's ground for denial. On his Form N-600, the Applicant asserted that his mother was physically present in the United States from May [] until January 1950, and from January 1987 until December 2020.³ The record contains J-Q-M-'s birth certificate, demonstrating that she was born in the United States in [] 1947, but the Applicant submits no evidence to corroborate his assertion that she remained in the United States until January 1950. Even if we were to accept the Applicant's claim that his mother was physically present in the United States for this period of three years and five months (which, again, we do not, as there is no corroborating documentation), the Applicant did not even assert that his mother was physically present in the United States for the requisite 10 years after her birth in [] 1947 and before his birth in [] 1968.⁴ Nor

² We use initials to protect the privacy of individuals.

³ This Form N-600 was filed in December 2020.

⁴ We note that the record contains a deed of purchase for property in Texas dated April 1992 and signed by J-Q-M-; however, this purchase occurred after the Applicant's birth in 1968 and therefore it does not contribute to the physical presence required to transmit U.S. citizenship to the Applicant.

did the Applicant assert she was present in the United States for five years between her fourteenth birthday in [] 1961 and his birth in [] 1968.

On appeal, the Applicant now contends that his mother was taken from the United States by her birth parents at the age of 12, an assertion that is inconsistent with that made on his Form N-600 that his mother was only physically present in the United States from [] 1947 until January 1950. However, he offers no corroborative evidence of this new claim and does not explain this inconsistency. As the evidence in the record only demonstrates that his mother was physically present in the United States when she was born in [] 1947, it is insufficient to establish, by a preponderance of the evidence, that his mother was physically present in the United States for at least ten years before the Applicant's birth, at least five of which were after her fourteenth birthday. The Applicant has therefore not demonstrated that he has satisfied the requirements at former section 301(a)(7) of the Act for acquisition of U.S. citizenship at birth from his U.S. citizen mother. Accordingly, the Applicant is ineligible for issuance of a Certificate of Citizenship and his application remains denied.

ORDER: The appeal is dismissed.