



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

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

In Re: 29657495

Date: DEC. 19, 2023

Appeal of Mount Laurel, New Jersey 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 her father pursuant to former section 301(a)(7) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(a)(7).¹

The Director of the Mount Laurel, New Jersey Field Office denied the Form N-600, concluding that the Applicant did not establish that her father met the prior U.S. physical presence requirements for transmission of citizenship under that section of the Act.² On appeal, the Applicant submits additional evidence and reasserts that she acquired U.S. citizenship at birth from her father. She also raises, for the first time, a possibility that she may have derived U.S. citizenship after birth under former section 320 of the Act, 8 U.S.C. § 1431, from her naturalized U.S. citizen mother.³

The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). 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 sustain the appeal.

I. 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. *Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1029 n.3 (9th Cir. 2001) (internal quotation marks and citation omitted).

¹ Re-designated as section 301(g) of the Act by Act of October 10, 1978, Pub. L. No. 95-432, 92 Stat. 1046.

² The Director incorrectly indicated in the denial that section 301(g) of the Act applied to the Applicant's citizenship claim. The error does not affect our adjudication on appeal, as the physical presence requirements under former sections 301(a)(7) and 301(g) of the Act were the same and did not change until former section 301(g) was amended in 1986.

³ We acknowledge this claim; however, to derive U.S. citizenship under former section 320 of the Act, a child born abroad to one U.S. citizen and one noncitizen parent had to reside in the United States pursuant to a lawful admission for permanent residence at the time of the noncitizen parent's naturalization or thereafter, but before turning 18 years of age. Because there is nothing in the record to indicate that the Applicant was admitted to the United States as a lawful permanent resident at any time, we will not address her derivative citizenship claim further.

The Applicant was born in Canada in [redacted] 1956 to a married U.S. citizen father and a noncitizen mother. At that time, former section 301(a)(7) of the Act governed acquisition of U.S. citizenship by persons born abroad to one U.S. citizen and one noncitizen parent. It provided, in relevant part that a person shall be a national and citizen of the United States at birth if the 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 . . . [and] 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”

Because the Applicant was born abroad, she is presumed to be a noncitizen and bears the burden of establishing her claim to U.S. citizenship by a preponderance of credible evidence. *See Matter of Baires-Larios*, 24 I&N Dec. 467, 468 (BIA 2008). Under the preponderance of the evidence standard, the Applicant must demonstrate that her citizenship claim is “probably true” or “more likely than not.” *Matter of Chawathe*, 25 I&N Dec. at 376.

II. ANALYSIS

The record includes a birth certificate of the Applicant’s father, which reflects that he was born in New Jersey in [redacted] 1935, and there is no dispute that he was a U.S. citizen at the time of the Applicant’s birth abroad in [redacted] 1956. The only issue on appeal is whether the Applicant has met her burden of proof to show that her father was physically present in the United States for 10 years before she was born and that at least five of those years were after the father’s 14th birthday in 1949.

The Director determined that the evidence, which included the father’s birth certificate and military records, was not sufficient to establish that he was physically present in the United States for at least five years after he turned 14 years old, and before the Applicant was born.

To overcome this determination the Applicant submits a personal statement, her father’s baptismal certificate, additional military documents, a newspaper announcement of her parents’ marriage, U.S. census records, and additional evidence of her paternal grandparents’ residence in the United States.

We have examined each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, and conclude that the record as supplemented on appeal is sufficient to show that the Applicant’s father was “more likely than not” physically present in the United States for the requisite period of 10 years before the Applicant’s birth abroad in 1956, and that five of those years were after the father’s 14th birthday in 1949. We will therefore sustain the appeal.

A. The Father’s U.S. Physical Presence Prior to 1949

The father’s timely registered birth and baptismal certificates show that he was born in New Jersey in late [redacted] 1935 and baptized there two months later, in [redacted] 1935. Other evidence, which includes naturalization documents of the Applicant’s great-grandfather, her U.S.-born paternal grandfather’s 1942 military registration card, residential listings, and U.S. census records, indicates that the father’s parents had an established residence in New Jersey at the time of his birth in 1935, and that he lived with his family and attended school in the United States until he was 14 years old.

The 1926, 1928, and 1931 residential listings and the 1930 census record indicate that the Applicant's paternal grandparents lived in [] New Jersey since at least 1926 and as of 1931, and that her paternal grandfather was employed as a hardwood floor layer. The paternal grandfather's military draft registration card, in turn, reflects that he continued to reside in New Jersey with his spouse and as of February 1942, when the Applicant's father was seven years old. Given the father's young age at the time and the documents pointing to his parents' residence and employment in New Jersey, we consider this evidence sufficient to show that the father resided and was physically present in the United States for the first seven years of his life.

The evidence is also adequate to show that the father's physical presence in the United States continued through his 14th birthday in [] 1949, as the information in the 1950 census record reflects that he lived with his parents and attended grammar school in New Jersey as of April 1950 when the census data was collected. The census record⁴ further shows that the Applicant's father lived at the same address in New Jersey "a year ago" (in 1949) and that he was a seventh grade student as of April 1950. This information indicates that the Applicant's father likely started attending school sometime in 1942, and continued his elementary education in the United States for the next eight years and past his 14th birthday in [] 1949.

Based on the above, we conclude that the preponderance of the evidence is sufficient to demonstrate that the Applicant's father resided with his parents in the United States since birth until he turned 14 years old in [] 1949, and that he was also "more likely than not" actually physically present in the country for this entire period.

B. The Father's U.S. Physical Presence from 1949 to 1956

The Applicant has also provided sufficient evidence to establish her father's physical presence in the United States for at least five years following his 14th birthday and before the Applicant's birth abroad in [] 1956. The Applicant states that in 1951 her father quit school to work with his own father in the construction industry, that he later joined the U.S. Marine Corps (USMC) in March 1953, and that he continued to honorably serve in the military at the time of her birth. The documents the applicant provided support these statements and point to her father's continued physical presence in the United States for the seven-year period from [] 1949 through [] 1956.

The information recorded in the Military and Civilian Occupational Specialties and Education worksheets, completed as part of the father's military duties assignments, reflect that the Applicant's he finished grammar school in 1950 and had one year of vocational training by 1951. The information therein also indicates that the father worked as a floor layer apprentice. This, and the evidence that the father was issued a Social Security number in 1951, is consistent with the Applicant's claim that her father began working as a teenager with her paternal grandfather who, as the census and residential records reflect, was a wood floor layer and a carpenter. The record also contains evidence of the father's enlistment in the USMC, detailed records of his military service and primary duties since March 1953, and the Form DD-214, Report of Separation from Active Duty (Form DD-214).

⁴ Specifically, the data concerning persons listed on sample lines, which includes the sample line number 20 listing the name of the Applicant's father and information about his residence and school attendance.

These documents show that the Applicant's father began his military service in March 1953 as a private in the USMC in [redacted] Pennsylvania, and thereafter served at different locations within the United States until April 1955, when he travelled to [redacted] Canada on military orders, and where he married the Applicant's mother in [redacted] 1956. According to the father's related sea and air travel embarkation slip, he returned to the United States a week after the Applicant's birth⁵ and continued his service in the USMC. Lastly, the information in the Form DD-214 confirms that as of 1975 the Applicant's father honorably served in the USMC for 22 years.

This evidence shows that after the Applicant's father turned 14 years old in [redacted] 1949, he remained physically present in the United States for over five years, continuing his education and working (three years and six months – from [redacted] 1949 to March 1953), and honorably serving in the U.S. military both in the United States (two years and one month – from March 1953 to April 1955) and in Canada (one year and [redacted] – from April 1955 until the Applicant's birth in 1956).⁶

III. CONCLUSION

Considering the evidence in the aggregate, we conclude that the Applicant has met her burden of proof to show that her U.S. citizen father was physically present in the United States for the requisite 10-year period before her birth, and that at least five of those years were after her father's 14th birthday. The Applicant therefore has established that she acquired U.S. citizenship at birth from her father and is eligible for a Certificate of Citizenship.

ORDER: The appeal is sustained.

⁵ The father's occupation on the Applicant's birth certificate is listed as "Serviceman, U.S. Marine Corps."

⁶As stated, the father's honorable military service abroad counts as his physical presence in the United States for purposes of former section 301(a)(7) of the Act.