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U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. 3000  
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U.S. Citizenship  
and Immigration  
Services

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FILE:

[REDACTED]

Office: MIAMI, FL

Date:

**JAN 04 2006**

IN RE:

Applicant:

[REDACTED]

APPLICATION: Application for Certificate of Citizenship pursuant to Section 201(g) of the Nationality Act of 1940; 8 U.S.C. § 601(g).

ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the District Director, Miami, Florida, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant was born in Ecuador on December 9, 1948. The applicant's parents, as indicated on his birth certificate, are [REDACTED]. The applicant's mother was born in Cleveland, Ohio on May 31, 1926. The applicant's parents were married in Ecuador on January 31, 1948. The applicant seeks a certificate of citizenship under section 201(g) of the Nationality Act of 1940, 8 U.S.C. § 601(g), based on the claim that he acquired U.S. citizenship at birth through his U.S. citizen mother.

The district director found that the applicant had failed to establish that his mother had the required residence in the United States prior to his birth. The application was denied accordingly.

On appeal, the applicant, through counsel, contends that the district director erroneously applied the residence requirement by insisting that the applicant's mother had to be physically present in the United States for the required period prior to his birth. See Applicant's Appellate Brief at 4-11. The applicant maintains that his mother resided in the United States continuously until November 1946, when she travelled to Ecuador to visit a friend. The applicant claims that his mother's visit to Ecuador was temporary, and that she maintained her U.S. residence during her visit abroad.

"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 (9<sup>th</sup> Cir. 2000) (citations omitted). The applicant in the present matter was born in 1948. Section 201(g) of the Nationality Act of 1940, 8 U.S.C. § 601(g), is therefore applicable to his citizenship claim.

Section 201(g) of the Nationality Act of 1940 states in pertinent part that:

A person born outside of the United States and its outlying possessions of parents one of whom is a citizen of the United States who, prior to the birth of such person, has had ten years' residence in the United States or one of its outlying possessions, at least five of which were after attaining the age of sixteen years, the other being an alien.

In the present matter, the applicant must establish that his mother resided in the U.S. for 10 years between May 31, 1926 and December 9, 1948, and that five of those years occurred after May 31, 1942, the applicant's mother's 16<sup>th</sup> birthday.

The record contains ample evidence to establish that the applicant's mother resided in the United States continuously until November 1946. The AAO must determine whether by traveling to Ecuador at that time, at the age of 20, the applicant's mother abandoned her U.S. residence. The AAO concludes that she did not.

In this regard, the AAO notes that the record includes a copy of the applicant's mother registration with the U.S. Consulate in Ecuador indicating that the purpose of her visit abroad was to "study" and that her permanent address was in New York. The AAO further notes the applicant's mother Foreign Service employment records, listing her New York permanent address.

Section 104 of the Nationality Act of 1940 defined the term "residence" as a place of general abode, the principal dwelling place. The purpose of the applicant's mother's visit abroad is relevant to the determination of whether she was residing in the United States during the six months after November 1946. *U.S. v. Karahalias*, 205 F.3d 331 (2d Cir. 1953); *Acheson v. Yee King Gee*, 184 F.2d 382 (9<sup>th</sup> Cir. 1950). The record establishes that the applicant's mother traveled to Ecuador for a temporary visit. Her temporary employment with the U.S. Consulate does not amount to an abandonment of her New York residence. Therefore, the AAO finds that the applicant has established that her mother resided in the United States for the required five years after the age of 16.

The AAO notes "[t]here must be strict compliance with all the congressionally imposed prerequisites to the acquisition of citizenship." *Fedorenko v United States*, 449 U.S. 490, 506 (1981). 8 C.F.R. § 341.2(c) provides that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. In order to meet this burden, the applicant must submit relevant, probative and credible evidence to establish that the claim is "probably true" or "more likely than not." *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). The applicant in the present case has met his burden and the appeal will be sustained.

**ORDER:** The appeal is sustained.