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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**



[REDACTED]

E₂

Date: **AUG 16 2012** Office: SAN ANTONIO, TX

FILE: [REDACTED]

IN RE: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under section 201 of the Nationality Act of 1940, 8 U.S.C. § 601 (1950).

ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630, or a request for a fee waiver. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director (the director), San Antonio, Texas, denied the Application for Certificate of Citizenship (Form N-600) and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born in Mexico on August 26, 1950. The applicant's parents were married at the time of his birth. The applicant's mother was born in the United States on October 25, 1925. The applicant's father is not a U.S. citizen. The applicant seeks a certificate of citizenship pursuant to section 201 of the Nationality Act of 1940 (the 1940 Act), 8 U.S.C. § 601 (1950), based on the claim that he acquired U.S. citizenship at birth through his mother.

The director found that the applicant failed to establish that his mother met the residency requirements in section 201 of the 1940 Act. *See Decision of the Director*, dated March 12, 2012. The application was denied accordingly. On appeal, the applicant claims through counsel that the director discounted the applicant's family members' testimony and the evidence is sufficient to show that his mother met the residency requirements set forth in the 1940 Act. *See Brief*.

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). 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 to one U.S. citizen and one alien parent, section 201(g) of the 1940 Act provides the applicable law. This section stated that the following shall be nationals and citizens of the United States at birth:

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: *Provided*, That in order to retain such citizenship, the child must reside in the United States or its outlying possessions for a period or periods totaling five years between the ages of thirteen and twenty-one years: *Provided further*, That, if the child has not taken up a residence in the United States or its outlying possessions by the time he reached the age of sixteen, or if he resides abroad for such a time that it becomes impossible for him to complete the five years' residence in the United States or its outlying possessions before reaching the age of twenty-one years, his American citizenship shall thereupon cease. . . .

Under section 201 of the 1940 Act, "the place of general abode shall be deemed the place of residence." Section 104 of the 1940 Act. Further, "the place of general abode" means an individual's "principal dwelling place," without regard to intent. *Matter of B-*, 4 I&N Dec. 424, 432 (Central Office 1951).

The applicant must establish that his mother resided in the United States for ten years before his birth on August 26, 1950 and that at least five of these years were after his mother's sixteenth birthday on October 25, 1941. Section 201(g) of the 1940 Act. Additionally, the applicant must show that he resided in the United States or its outlying possessions for a period or periods totaling

five years between the ages of 13 and 21, or establish that the retention requirements do not apply to him.

The applicant presented a Brownsville, Texas Attested Record of Birth Certificate and a Certificate of Birth indicating that his mother's birth was attested to and registered in Brownsville, Texas on May 2, 1958. *See Attested Record of Birth Certificate and Certificate of Birth*, issued July 8, 1969 and March 2, 2011. The applicant presented a Certificate of Baptism reflecting that the applicant's mother was baptized in Brownsville, Texas on May 1, 1927. *See Certificate of Baptism*, issued July 25, 1977. The applicant presented a Marriage Certificate for [REDACTED] [REDACTED] indicating that the applicant's parents were married in Monterrey, Nuevo Leon, Mexico on September 28, 1944 and that the applicant's mother was a resident of Matamoros, Mexico. *See Marriage Certificate*, issued on January 23, 1976.

The applicant presented a type-written Mexican Birth Certificate indicating that he was born to [REDACTED] on August 26, 1950 in Heroica Matamoros, Tamaulipas, Mexico. *See Birth Certificate for Antonio Razo Alvarado*, issued March 1968. A review of the Birth Certificate submitted by the applicant reveals that the nationality and domicile of the applicant's mother were altered to read "American" and "3215 ht. 27 Brownsville, Tex."¹ A copy of the original Birth Certificate reveals that the applicant's mother's nationality and domicile are listed as "Mexican" and "Independencia y Guerrero 17a." and that the applicant's mother's occupation was listed as "housewife." *See Birth Certificate for Antonio Razo Alvarado*, issued March 4, 2011. The original Birth Certificate also reveals that the applicant's birth was reported by the applicant's mother on December 16, 1950.

In a sworn statement, dated August 27, 1979, the applicant's maternal grandfather stated that his daughter, [REDACTED] lived in the United States from birth until she was five years old. He stated that the applicant's mother returned to the United States in 1945. He stated that, when the applicant's mother resided in Mexico, she lived in Matamoros and she never visited the United States. He stated that when the applicant's mother resided in the United States, she resided in Brownsville, Texas, and she only made short day trips to the border. The applicant's maternal grandfather's statement lacks probative detail. His statement also conflicts with the information the applicant's mother provided for the Birth Certificates which indicate that the applicant's mother resided in Matamoros (Independencia y Guerrero 17a.) during the period in question.

In a sworn statement, dated March 28, 2011, the applicant's mother stated that she resided in the United States from birth until the age of five. She stated that she got married at the age of nineteen and returned to the United States almost a year after she was married in order to work. She stated that she would visit her children in Mexico every eight days and would give birth to her children in Mexico, only staying for 15, 30, or 40 days after the birth. She stated that she resided in Brownsville with her godparents, [REDACTED] and worked for her godparents' family. The applicant's mother's statement lacks probative detail. The applicant's mother's statement also conflicts with the information she provided for her children's Birth Certificates which indicate that she was not employed (housewife) and resided in Matamoros (Independencia y Guerrero 17a.).

¹ The Birth Certificate also contained an altered place of residence for the applicant's maternal grandfather.

Here, the evidence in the record is insufficient to show that the applicant's mother was physically present in the United States for at least ten years before the applicant's birth in 1950, five of which were after October 25, 1941. The Birth Certificate and Baptismal Certificate only provide evidence that the applicant's mother was present in the United States in 1925 and 1927. Although the applicant provided two statements, including a sworn statement from the applicant's mother testifying that she was present in the United States, the statements are inconsistent with testimony provided by the other witness and/or inconsistent with contemporaneous documentation; and both lack detail and are not supported by other documentation of the applicant's mother's physical presence in the United States for the required period. *Cf. Vera-Villegas v. INS*, 330 F.3d 1222, 1235 (9th Cir. 2003) (holding that the applicant met his burden of proving physical presence despite lack of contemporaneous documentation where he presented detailed testimony, three witnesses, and numerous affidavits); *Lopez Alvarado v. Ashcroft*, 381 F.3d 847, 854 (9th Cir. 2004) (finding that the applicants substantiated their physical presence in the United States through testimony by multiple employers, and letters from landlords, friends, family, and church members).

Finally, the AAO notes that even if the applicant's mother could satisfy the applicable residency requirements, the applicant has not presented any evidence that he meets, or is excluded from, the retention requirements set forth in section 201(g) of the 1940 Act.²

The applicant bears the burden of proof to establish the claimed citizenship by a preponderance of the evidence. Section 341 of the Immigration and Nationality Act, 8 U.S.C. § 1452; 8 C.F.R. § 341.2(c). The applicant has failed to establish by a preponderance of the evidence that his mother resided in the United States for the requisite period and that the applicant retained the claimed citizenship. Accordingly, the applicant is not eligible for citizenship under section 201(g) of the 1940 Act, and the appeal will be dismissed.

ORDER: The appeal is dismissed.

² The Petition to Classify Status of Alien Relative for Issuance of Immigrant Visa (Form I-130) filed on behalf of the applicant on December 12, 1969, indicates that the applicant had resided at the same address in Matamoros, Mexico since 1955. The applicant was not admitted to the United States until September 7, 1970.