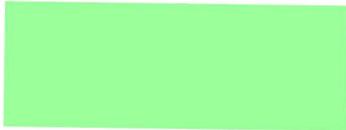




U.S. Citizenship  
and Immigration  
Services

(b)(6)

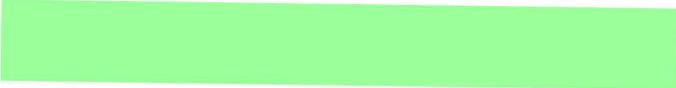


Date: **OCT 06 2014**

Office: HARLINGEN, TEXAS

FILE: 

IN RE:

Applicant: 

APPLICATION: Application for Certificate of Citizenship under Section 201(g) of the Nationality Act of 1940 (1943)

ON BEHALF OF APPLICANT:

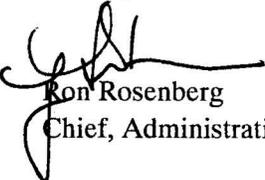


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,



Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director of the Harlingen, Texas Field Office (the director) 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.

*Pertinent Facts and Procedural History*

The applicant was born in Mexico on December 3, 1943. Her mother, now deceased, was born on September 14, 1918, and was a U.S. citizen. Her father was born in Mexico and was not a U.S. citizen. The applicant presently seeks a certificate of citizenship pursuant to section 201(g) of the Nationality Act of 1940 (the Act of 1940), Pub. L. 76-853, 54 Stat. 1137 (October 14, 1940), based on the claim that she acquired U.S. citizenship at birth through her mother.<sup>1</sup>

The director determined in a decision, dated December 17, 2013, that the applicant failed to establish that her mother was in the United States for 10 years prior to the applicant's birth, five years of which were after the applicant's mother turned 16.<sup>2</sup> The Form N-600 was denied accordingly. Through counsel, the applicant asserts on appeal that the record establishes, by a preponderance of the evidence, that the applicant's mother was physically present in the United States as required. The applicant submits a corrected baptismal certificate for her mother and Mexican civil registry evidence to support her assertions on appeal.

We conduct appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

*Applicable Law*

*Section 201(g) of the Act of 1940*

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, 1028 n.3 (9<sup>th</sup> Cir. 2001) (internal citation omitted). The applicant was born in 1943. Section 201(g) of the Act of 1940, in effect at the time of the applicant's birth, therefore applies to her citizenship claim.

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<sup>1</sup> The record also reflects that the applicant was admitted into the United States as a lawful permanent resident on July 8, 1968, when she was 24 years old, and that she became a naturalized U.S. citizen on June 14, 1999, when she was 55 years old.

<sup>2</sup> The director's decision refers to former section 301(a)(7) of the Act; 8 U.S.C. § 1407(a)(7); however, the applicant's acquisition of citizenship claim is analyzed pursuant to requirements set forth in section 201(g) of the Act of 1940.

Section 201(g) of the Act of 1940 states, in pertinent part, that the following shall be 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 . . . [.]

Section 201(g) of the Act of 1940 also contained retention requirements that were subsequently amended. Applicable to this applicant is that the retention requirements contained in section 201(g) of the Act of 1940 could be met if a person was continuously present in the United States for a period of not less than two years between the ages of 14 and 28 or, for those person who came to the United States prior to October 27, 1972, by complying with the five-year continuous physical presence requirement immediately following the coming into the United States. See section 301(b) of the former Act; 8 U.S.C. § 1401(b). See also, the Act of October 27, 1972, Pub.L. 92-582, 86 Stat. 1289.

Under section 104 of the Act of 1940, “the place of general abode shall be deemed the place of residence.” 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 burden of proof is on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. 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 each 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)).

*Analysis*

*Residence Requirement*

The applicant must establish that her mother resided in the United States for 10 years before the applicant’s birth on December 3, 1943, and that at least five of those years were after her mother’s 16th birthday on September 14, 1934.

The evidence relating to the applicant’s mother’s residence in the United States during the requisite time period includes three baptism certificates certifying that the applicant’s mother, [REDACTED] was baptized at the [REDACTED] Texas on August 8, 1919. The record also contains a baptism certificate for the applicant’s maternal uncle, Andres Osuna, reflecting that he was baptized at the [REDACTED] Texas on September 21, 1928, as reflected in the church Baptismal Register dated October 12, 2012.

A U.S. immigration manifest for the applicant's maternal grandmother reflects, in pertinent part, that she applied for admission into the United States in Texas on July 29, 1923; she was accompanied by her two children, [REDACTED] she was previously in the United States from 1919 to 1920; and her last residence was in Tamaulipas, Mexico. A U.S. immigration manifest for the applicant's maternal grandfather reflects, in pertinent part, that he was admitted into the United States on July 22, 1939, and that, at the time, he indicated that he was previously in the United States from 1915 to 1929. Notations contained on the reverse side of the manifest indicate that the applicant's maternal grandfather was admitted into the United States "with family" on August 12, 1939. Evidence that the applicant's maternal grandfather registered for the United States Selective Service on September 12, and that he listed an address in [REDACTED] Texas at the time, is also contained in the record; however, the year that the document was signed is illegible.

[REDACTED] states in a September 17, 2013 affidavit, that his father was the applicant's maternal grandfather's brother, and that he remembers visiting the applicant's mother and her family in the 1940s, in Kingsville and Bishop, Texas. The applicant's maternal aunt, [REDACTED], states in an affidavit dated April 19, 2013, that she, the applicant's mother, and their family lived and worked in Bishop, Texas around 1935; and that they worked in [REDACTED] Texas around 1938, and "for a few years all year round." She states that the applicant's mother stopped working when she married in 1941, and that the applicant's mother and father "left together to continue working in the cotton fields" in Texas. The applicant's mother's marriage certificate reflects that she married her husband in [REDACTED] Tamaulipas, Mexico on February 1, 1941.<sup>3</sup>

Upon review, the evidence contained in the record fails to establish, by a preponderance of the evidence, that the applicant's mother resided in the United States for 10 years prior to the applicant's birth on December 3, 1943, at least five years of which were after her mother's 16th birthday on September 14, 1934, as required under section 201(g) of the Act of 1940.

In ascertaining the evidentiary weight of affidavits, the Service must determine the basis for the affiant's knowledge of the information to which he is attesting; and whether the statement is plausible, credible, and consistent both internally and with the other evidence of record. *Matter of E-M-*, 20 I&N Dec. 77 (Comm'r. 1989).

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<sup>3</sup> The applicant's mother's cousins, [REDACTED] state that they remember that the applicant's mother and her family lived and worked in Texas in the years 1920, 1930 and after 1940; however both cousins were born after the applicant's birth, and they have no personal knowledge of the applicant's mother's physical presence in the United States prior to 1943. Copies of U.S. citizen identification cards issued to the applicant's mother and uncle are dated after the applicant's birth. Photos contained in the record fail to demonstrate when or where they were taken, or that the applicant's mother resided in the United States during the required time period set forth in section 201 of the Act of 1940.

The applicant's maternal aunt indicates that the applicant's mother lived and worked in the United States around 1935 and 1938; "for a few years all year round;" and until she married in 1941; however, the affidavit provides no probative details about the applicant's mother's residence in the United States. Similarly, family friend, [REDACTED] states that he remembers visiting the applicant's mother in Texas in the 1940s; however, he provides no dates or details about the applicant's mother's residence in the United States during that time period, or describes the visits with any specificity sufficient to establish the applicant's mother's periods of residence in the United States.

The applicant's mother and maternal uncle's baptism certificates show the family's presence in the United States in 1919 and 1928. Although the applicant's maternal grandmother's manifest reflects that she was admitted into the United States in 1923, it is unclear if her accompanying child, [REDACTED] is the applicant's mother, [REDACTED] moreover, if the applicant's mother did enter the country with her family in 1923, the manifest does not establish how long she remained in the United States. In addition, the applicant's maternal grandfather's manifest does not state or establish that he lived with his family in the United States between 1915 and 1929.

The evidence indicates that the applicant's mother resided in the United States, at most, between 1919 – 1929 and then again in 1939, but does not establish five years of physical presence after her mother's 16th birthday on September 14, 1934.

#### *Retention Requirement*

The applicant also failed to establish, by a preponderance of the evidence, that she met the retention requirements for acquisition of citizenship under section 201(g) of the Act of 1940, as amended. Although the record contains evidence that the applicant was admitted into the United States as a lawful permanent resident on July 8, 1968, when she was 24 years old, the record contains no evidence establishing that the applicant was continuously present in the United States prior, or subsequent, to her admission into the country in July 1968. The applicant therefore failed to establish that she would have met the retention requirements under section 201(g) of the Act of 1940, as amended.<sup>4</sup>

The regulation at 8 C.F.R. § 341.2(c) states that the burden of proof is on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. Here, the applicant has failed to meet her burden of proof.

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<sup>4</sup> When completing her Application for Naturalization (Form N-400) in 1997, the applicant indicated that only one (born in 1967) of her seven children was born in the United States. Her other six children were born in Mexico in 1964, 1966, 1970, 1973, 1976 and 1982.

*Conclusion*

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. The appeal is therefore dismissed.

**ORDER:** The appeal is dismissed. The application remains denied.