



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

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

MATTER OF J-W-M-

DATE: DEC. 29, 2015

CERTIFICATION OF NEW ORLEANS DISTRICT OFFICE DECISION

APPLICATION: FORM N-600, APPLICATION FOR CERTIFICATE OF CITIZENSHIP

The Applicant, a native and citizen of Canada, seeks a certificate of citizenship pursuant to section 201 of the Nationality Act of 1940 (the 1940 Act), 8 U.S.C. § 601 (1945). The Director, New Orleans District Office, denied the application. The matter is now before us on certification. The decision of the Director will be affirmed and the application will be denied.

The record reflects that the Applicant was born in Canada on [REDACTED], to married parents. The Applicant's father was born in the United States on [REDACTED]. The Applicant's mother was born in Canada and was not a U.S. citizen at the time of the Applicant's birth. The Applicant seeks a certificate of citizenship pursuant to former section 201 of the 1940 Act based on the claim that he acquired U.S. citizenship at birth through his father.

In a December 17, 1998, decision, the Director found that the Applicant did not establish that his father was physically present in the United States for the requisite period prior to the Applicant's birth, as is required by former section 201(g) of the 1940 Act. The application was denied accordingly. In a subsequently issued oral decision, an immigration judge terminated removal proceedings against the Applicant on the ground that the Immigration and Naturalization Service (INS)¹ did not prove the Applicant's alienage. The INS appealed the decision of the immigration judge, but on August 23, 2002, the Board of Immigration Appeals (the Board) affirmed the immigration judge's decision without an opinion. On April 13, 2015, the Director determined that the application remained denied but certified the decision to us for review. The Applicant declined to file a brief in response to the Director's notice of certification.

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). The Applicant in this case was born in 1947, to one U.S. citizen and

¹ On March 1, 2003, the Immigration and Naturalization Service (INS) was abolished and its functions transferred to various agencies within the newly created Department of Homeland Security. Immigration services formerly provided by the INS were transferred to the U.S. Citizenship and Immigration Services (USCIS); enforcement oversight, to the Border Transportation Security Directorate; border control, to the U.S. Customs and Border Protection; and interior enforcement, to the U.S. Immigration and Customs Enforcement.

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one foreign national parent who were married at the time of his birth. Accordingly, section 201 of the 1940 Act is applicable in this case.

Section 201(g) of the 1940 Act provides 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.

The preceding provisos shall not apply to a child born abroad whose American parent is at the time of the child's birth residing abroad solely or principally in the employment of the Government of the United States or a bona fide American, educational, scientific, philanthropic, religious, commercial, or financial organization, having its principal office or place of business in the United States . . .

In addition, section 201(h) of the Act of 1940 states that the provisions of section 201(g) concerning retention of citizenship shall apply to a child born abroad subsequent to May 24, 1934.

The record does not indicate that the Applicant's father was employed by the U.S. Government or an organization whose principal office was in the United States. The Applicant must therefore establish that his father resided in the United States for ten years before the Applicant's birth on [REDACTED] and that at least five of these years were after his father's 16th birthday on [REDACTED]. Additionally, as the Applicant was born after May 24, 1934, he must show that he, the Applicant, 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.

For the purposes of section 201 of the 1940 Act, "the place of general abode shall be deemed the place of residence." See 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).

Because the Applicant was born abroad, he is presumed to be an alien and bears the burden of establishing his claim to U.S. citizenship by a preponderance of credible evidence. See section 341

of the Immigration and Nationality Act, as amended (the Act), 8 U.S.C. § 1452; 8 C.F.R. § 341.2(c); see also *Matter of Baires-Larios*, 24 I&N Dec. 467, 468 (BIA 2008).

The “preponderance of the evidence” standard requires that the evidence demonstrate that the Applicant’s claim is “probably true,” where the determination of “truth” is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm’r 1989). In evaluating the evidence, *Matter of E-M-* also stated that “[t]ruth is to be determined not by the quantity of evidence alone but by its quality.” *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, U.S. Citizenship and Immigration Services (USCIS) must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true. Even if USCIS has some doubt as to the truth, if the Applicant submits relevant, probative, and credible evidence that leads the agency to believe that the claim is “probably true” or “more likely than not,” the Applicant has satisfied the standard of proof. See *U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (defining “more likely than not” as a greater than 50 percent probability of something occurring). If USCIS can articulate a material doubt that leads it to believe that the claim is probably not true, then USCIS may deny the application. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

A person may only obtain citizenship in strict compliance with the statutory requirements imposed by Congress. *INS v. Pangilinan*, 486 U.S. 875, 885 (1988). Even courts may not use their equitable powers to grant citizenship, and any doubts concerning citizenship are to be resolved in favor of the United States. *Id.* at 883-84; see also *United States v. Manzi*, 276 U.S. 463, 467 (1928) (stating that “citizenship is a high privilege, and when doubts exist concerning a grant of it ... they should be resolved in favor of the United States and against the claimant”). Moreover, “it has been universally accepted that the burden is on the alien applicant to show his eligibility for citizenship in every respect.” *Berenyi v. District Director, INS*, 385 U.S. 630, 637 (1967).

Strict compliance with statutory prerequisites is required to acquire citizenship. See *Fedorenko v. U.S.*, 449 U.S. 490, 506 (1981).

The evidence of the record includes, but is not limited to: birth, baptismal, marriage, and death certificates; school and military records; letters, statements, affidavits, and a record of testimony in removal proceedings. The record also includes the oral decision of the immigration judge, dated on March 9, 1999, terminating the Applicant’s removal proceedings based on a finding that the Applicant acquired U.S. citizenship through his father.

Following a hearing on March 9, 1999, during which testimony was provided by the Applicant and his older brother, the immigration judge found that the Applicant had borne his burden of proof to establish acquisition of citizenship, and terminated the removal proceedings on the basis that the Applicant’s alienage had not been established.

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USCIS is not bound by the immigration judge's finding regarding the applicant's U.S. citizenship status. The immigration judge does not have jurisdiction or authority to declare that an alien is a U.S. citizen. Rather, the immigration judge's termination of removal proceedings against the Applicant was based on the judge's jurisdictional determination that the U.S. Department of Homeland Security had failed to meet its burden of proving the Applicant's alienage and deportability by clear, convincing and unequivocal evidence. *See Murphy v. INS*, 54 F.3d 605 (9th Cir. 1995) (holding that in deportation proceedings, the government must prove alienage by clear, unequivocal and convincing evidence.)

Minasyan v. Gonzalez, 401 F.3d 1069 (9th Cir. 2005) clarifies further that an immigration judge does not have authority to declare that an alien is a citizen of the United States, and that such jurisdiction rests with the USCIS citizenship unit and with the federal courts.

The Applicant first contends that his father was a U.S. citizen at the time of the Applicant's birth abroad, and we agree. The Applicant has submitted sufficient evidence to demonstrate this, including a Probate Court certification, the father's baptismal certificate, and his death certificate. Accordingly, we find that the preponderance of the evidence of the record shows that the Applicant's father was a U.S. citizen.

We also agree that the Applicant has demonstrated by a preponderance of evidence that he resided in the United States for a period of at least five years between the ages of 13 and 21, as is required for retention of citizenship under section 201(g) of the Act of 1940. The record reflects that the Applicant was admitted to the United States as permanent resident on July 1, 1951. As documentary evidence of his residence in the United States during the requisite period the Applicant submitted a letter from the [REDACTED] Michigan, which confirms that the Applicant attended the school from January 1961 through the spring of 1964. In addition, the Applicant provided a copy of Form DD-214, Armed Forces of the United States Report of Transfer or Discharge, to show that he served in the U.S. military from [REDACTED] 1966, until he was honorably discharged on [REDACTED] 1967. We find that the documents submitted by the Applicant, in addition to his testimony before the immigration judge, meet the preponderance of the evidence standard as it appears more likely than not that the Applicant resided in the United States for at least five years between the ages of 13 and 21. Thus, we find that the Applicant meets the citizenship retention requirement of section 201(g) of the Act of 1940.

However, the evidence of the record is insufficient to support the Applicant's contention that his father resided in the United States for the for ten years before the Applicant's birth on [REDACTED] and that at least five of these years were after his father's 16th birthday on [REDACTED]. As noted above, the documentary evidence establishes that the Applicant's father was born in the United States on [REDACTED]. The Applicant's father subsequently took up residence in Canada, where he met and married the Applicant's mother on [REDACTED], as shown by the marriage certificate of the Applicant's parents. The record does not establish the exact date of the Applicant's father's departure from the United States. According to the Applicant's initial written statement submitted in connection with removal proceedings on or about July 20, 1992, the Applicant's father

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“...moved to Canada but at what age is a mystery.” During the removal hearing on March 9, 1999, the Applicant testified that his father departed the United States in 1931 or 1932 during the Great Depression. The Applicant further testified that he gained the knowledge of the time of the departure through statements that his father made to him directly and through conversations with other family members. For example, the Applicant recalled his father’s fond memory about an incident involving his father and his father’s brother who had squandered profits from their father’s dairy farm in [REDACTED] on a horse race and were absent from the family residence for two weeks. According to the Applicant, his father was either 21 or 22 when this incident occurred. The Applicant also recalled that during the viewing of the movie “King Kong” sometime in the 1950s, his father commented that he remembered when the Empire State Building was built. The Applicant testified, however, that he never heard his father say that he personally toured the Empire State Building. Furthermore, the Applicant offered no documentary evidence to show that his father resided in Tampa until he was in his early twenties.

The Applicant’s older brother testified during the removal hearing on March 9, 1999, that his father was approximately 21 or 22 years old when he departed the United States for Canada. According to the Applicant’s brother’s testimony, their father attended school in [REDACTED] Florida, but completed only the second or third grade. Further, the Applicant’s brother testified that although their grandfather was a wealthy man who owned a dairy farm in [REDACTED] Florida, the farm was not incorporated under the laws of Florida. Again, no school, land, or other records were presented to corroborate this testimony. Moreover, evidence was not submitted to show that such records were unavailable.

Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm’r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm’r 1972)).

The record shows that the Applicant made some efforts to obtain documentary evidence to prove his father’s residence in the United States. For example, the Applicant inquired with the Census Bureau as to whether his father was on the census roll in [REDACTED] Florida in 1931 or 1932. The Census Bureau’s response, included in the record, states that census records for the years 1931 and 1932 are not available because the Federal Census Population is taken every 10 years, in years ending in zero. The record does not indicate that the Applicant re-submitted his inquiry regarding census records for the year 1930, or that such records were unavailable.

To document the unavailability of primary evidence of his father’s residence in the United States between 1926 and 1931, the Applicant also submitted an affidavit executed by his sister. In her affidavit, the Applicant’s sister states that she attempted to obtain evidence of the father’s residence in Florida during the time period in question by contacting two companies. However, when she inquired about G.T.E.’s² records from 1932, she was informed that the company’s records did not go back that far, and that it was unlikely that G.T.E. existed in 1932. In addition, the Applicant’s sister

² The affiant does not explain the abbreviation in her affidavit.

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claims that she contacted the [REDACTED] by phone, but was informed that the company did not have records from 1932, and that a court order would be required to search the existing records. The Applicant's sister does not indicate whether she made any inquiries with the State of Florida regarding the land, school or vital statistics records. In addition, the Applicant's sister makes no claims regarding the unavailability of such records.

The Applicant has also submitted two notarized affidavits to establish that his father resided in the United States until 1932. The first affidavit was executed by the Applicant's maternal uncle. The affiant states that the Applicant's father arrived in [REDACTED] Canada, when he was between the ages of 22 and 23. The affiant avers that he knows when the Applicant's father arrived in Canada, because on [REDACTED] 1939, the Applicant's father married his sister. We note that at least seven years had passed between the Applicant's father's claimed arrival in Canada at the age of 22 or 23 and his marriage to the affiant's sister. The affiant does not offer any additional information about his relationship to the Applicant's father. The affiant does not specify how and when he first met the Applicant's father, whether he personally witnessed his arrival in Canada, or whether he learned about it from someone else. Further, he does not clarify how he knew that the Applicant's father was 22 or 23 years of age when he came to reside in Canada. Given this lack of specificity and detail, we find that the affidavit carries diminished evidentiary weight. Although the affiant may have personal knowledge of the Applicant's father's marriage to his sister on [REDACTED] 1939, this fact alone, without any additional information, does not establish that the affiant can attest to the Applicant's father's arrival in Canada at the age of 22 or 23.

The second affidavit was executed by a friend who claims that she was born in [REDACTED] Florida, in 1908, and had known the Applicant's family for years. According to her affidavit, the Applicant's father lived in [REDACTED] Florida, until he moved to Canada in 1932 with his family. The affiant further states that she attended the Applicant's father's funeral in [REDACTED] 1989 in [REDACTED] Florida. Again, the affidavit does not provide any specific details about the affiant's relationship with the Applicant's father's family. Further, the affiant does not explain how she knew when the Applicant's father and his family left the United States for Canada, or how old the Applicant's father was at the time. The affiant's mere assertion the Applicant's father moved to Canada with his family in 1932 without more, is of little evidentiary weight.

Depending on the specificity, detail, and credibility of an affidavit, letter or statement, USCIS may give the document more or less persuasive weight in a proceeding. In addition, the Board has held that testimony should not be disregarded simply because it is "self-serving." See, e.g., *Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citations omitted). However, the Board has also held that the introduction of corroborative testimonial and documentary evidence, where available, is not only encouraged, but required. *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the affected party to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

We find that the evidence in the record is insufficient to establish that the Applicant's father resided in the United States between 1926 and 1931. Cf. *Vera-Villegas v. INS*, 330 F.3d 1222, 1235 (9th

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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).

Here, the evidence is insufficient to show that the Applicant's father resided in the United States for five years before the Applicant's birth in [REDACTED] and that these years were after his sixteenth birthday in [REDACTED]. We note that the Applicant's initial statement regarding his lack of knowledge as to the time of his father's departure from the United States is inconsistent with his testimony during the removal hearing on March 9, 1999, when he claimed that he knew his father left the United States in 1931 or 1932. It appears that the Applicant learned of the timing of his father's departure from the United States by talking with other members of his family. As discussed above, we have considered the information provided by Applicant's brother and uncle, but found that it did not have sufficient probative value because of lack of detail and specificity. Therefore, although we acknowledge the Applicant's testimony regarding his father's physical presence in the United States, we find it inconclusive in light of the deficiencies in the remainder of the record. Second, the affidavits submitted by the Applicant are lacking in detail and they are not supported by independent, objective evidence. Although the Applicant and his brother testified in removal proceedings about their recollections of their father's stories of residence in the United States, they offered no evidence to support their testimony. When affidavits are presented to establish eligibility, they must overcome the unavailability of both primary and secondary evidence. 8 C.F.R. § 103.2(b)(2). Further, before submitting affidavits, an applicant or petitioner must demonstrate that primary or secondary evidence does not exist or cannot be obtained. *Id.* The record indicates that the Applicant's sister was unable to obtain records from the Florida utility companies for the 1926-1932 time period, and that there are no census data for the year 1932. However, the Applicant has not shown that he attempted to secure other documents to prove his father's physical presence in the United States prior to 1932, such as school, census, land and other records, or that such documents did not exist or could not be obtained.

It is the Applicant's burden to establish the claimed citizenship by a preponderance of the evidence. Section 341(a) of the Act, 8 U.S.C. § 1452(a); 8 C.F.R. § 341.2(c). Here, that burden has not been met. Accordingly, the December 17, 1998, decision of the Director will be affirmed, and the application will remain denied.

ORDER: The initial decision of the Field Office Director, New Orleans Field Office is affirmed, and the application is denied.

Cite as *Matter of J-W-M-*, ID# 14138 (AAO Dec. 29, 2015)