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

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

MATTER OF M-A-Z-D-

DATE: NOV. 5, 2015

APPEAL OF EL PASO DISTRICT DIRECTOR DECISION

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

The Applicant, a native and citizen of Mexico, seeks a Certificate of Citizenship. *See* Immigration and Nationality Act (the Act) § 301, 8 U.S.C. § 1401 (1961) (amended by Pub. L. No. 95-432, 92 Stat. 1046 (1978)). The District Director, El Paso, Texas, denied the application. We dismissed an appeal of the denial decision on November 18, 2002. The matter is now before us on motion to reopen and reconsider. The motion will be granted and the appeal will be sustained.

Pertinent Facts and Procedural History

The Applicant was born on [REDACTED], in [REDACTED] Mexico. The Applicant's father, [REDACTED] was born in the United States on [REDACTED] 1955. The Applicant's mother, [REDACTED] was born in Mexico and was not a U.S. citizen at the time of the Applicant's birth. The Applicant's parents were married on [REDACTED] 2000. The Applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship at birth through his father under section 301(g) of the Act.

In a decision dated April 15, 2002, the Director denied the application, finding that the record did not establish that the Applicant's U.S. citizen father had been physically present in the United States or one of its outlying possessions for five years, at least two of which were after the age of 14, as required under section 301(g) of the Act. On appeal, in a decision dated November 18, 2002, we found that the Applicant failed to establish that he acquired U.S. citizenship at birth because evidence in the record did not support that his father was physically present in the United States for the required period prior to the Applicant's birth.

On motion the Applicant asserts his father was physically present in the United States as required and with the motion submits a copy of a U.S. Passport Card issued to his father by the U.S. Department of State on September 3, 2009, along with copies of evidence previously submitted.

The Applicant also requests that he and his father be given an opportunity to present oral argument. The regulation at 8 C.F.R. § 103.3(b) provides that the affected party must explain in writing why oral argument is necessary. USCIS has the sole authority to grant or deny a request for oral argument and will grant such argument only in cases that involve unique factors or issues of law that

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cannot be adequately addressed in writing. In this case, no cause for oral argument is shown. Consequently, the request is denied

Applicable 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. *See Chau v. INS*, 247 F.3d 1026, 1028 n.3 (9th Cir. 2001). Here, the Applicant was born in [REDACTED]. Accordingly, section 301(g) of the Act controls his claim to U.S. citizenship.

Section 301(g) of the Act provides in pertinent part that the following shall be citizens of the United States at birth:

a person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, 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 five years, at least two of which were after attaining the age of fourteen years.

Analysis

The record establishes that the Applicant's father was born on [REDACTED], 1955, in [REDACTED] Texas. The Applicant must establish that his father was physically present in the United States for at least five years between 1955 and 1990, at least two of which were after August 3, 1969, when he turned 14. On the Form N-600, the Applicant indicates that his father resided in the United States from 1955 until 1960, from 1970 until 1986, and from 2000 until the present. In an undated statement, the Applicant's father states that most of his schooling had been in Mexico, so he has no U.S. school records. He further states that he resided in [REDACTED] Texas, until 1979 and then lived in [REDACTED] New Mexico, until about 1987.

The record contains, in pertinent part, copies of the following: the father's birth certificate issued in [REDACTED] Texas, in 1955; a marriage license for the Applicant's father and the Applicant's mother issued in [REDACTED] Texas, on [REDACTED] 2000; a marriage license for the Applicant's father and his first wife issued in [REDACTED] Texas, on [REDACTED] 1979; birth certificates for the Applicant's half-siblings born in [REDACTED] Texas, in 1979 and 1980, showing the same father as the Applicant; the father's social security earnings statements from 1980 through 1987 and 1995 through 1998; the [REDACTED] City Directory from 1976 through 1988 listing the mother of the Applicant's father; statements from the Applicant's father, the Applicant's half-brother, and the father's mother about the father's physical presence in the United States; a tax bill dated in 2002 from the State of New Mexico issued to the Applicant's father; a letter from a family friend stating that he knew the family in [REDACTED] and

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a letter from property managers dated May 18, 2000, stating that the mother of the Applicant's father lived in their [REDACTED] complex at [REDACTED] from 1970 to 1975.

In a statement dated October 26, 2001, the mother of the Applicant's father states that she began residing at [REDACTED] Texas, in 1975 with her children, including the Applicant's father, and the family moved in 1986. Copies of pages of the [REDACTED] City Directory list the father's mother as living at [REDACTED] from 1976 through 1988. The letter from a family friend, dated October 29, 2001, states that he had known the Applicant's grandmother and her children, including the Applicant's father, for "about 30 years." Although not providing specific dates, he maintains that he knew the family, including the Applicant's father, as residing in the [REDACTED] [REDACTED] which is the location of the apartment complex referred to in the above-referenced letter from the property managers, and at [REDACTED] and that he had employed the Applicant's grandmother and his father at a business in [REDACTED]. The Applicant's father states that he resided with his mother until 1979, when he moved to [REDACTED] New Mexico, with his spouse and children, and he remained there until about 1987. A 2002 statement from the half-brother of the Applicant, who was born in 1979, asserts that their father had resided with their family in [REDACTED] and [REDACTED] from 1979 to 1987, when his parents separated. Employment records show the father worked in the United States from 1980 to 1987, but the record does not contain the specific dates or any further detail of the father's employment.

The marriage certificate for the father's first marriage, dated [REDACTED] 1979, lists his address as [REDACTED]. The divorce certificate dated [REDACTED], 2000, also indicates that at the time of marriage the Applicant's father and his first spouse resided at [REDACTED]. The birth certificate of the Applicant's half-brother indicates he was born in [REDACTED] on [REDACTED] 1979, and the birth certificate of the Applicant's half-sister indicates she was born in [REDACTED] on [REDACTED], 1980, with her birth certificate indicating an address of [REDACTED]. Social security wage information shows that the Applicant's father worked in [REDACTED] in 1980, and the birth certificates of the Applicant's half-siblings each appear to list the same employer for the Applicant's father, thus indicating he was also employed in [REDACTED] from 1979 to 1980.

From the social security wage information submitted to the record we found that wages in 1986 covered a full year of employment and that he was also employed in the United States from 1981 to 1985, though the dates and duration of this employment are not clear from the record. However, from yearly totals of wage information it appears that in 1980, 1982, and 1983, as well as possibly 1985, the Applicant's father was employed for at least two quarters, or half of each year.

The record indicates that the Applicant's father was living with his mother in [REDACTED] beginning in 1975 or earlier, and continued residing there until his 1979 marriage, after which he moved with his first spouse and children to New Mexico in about 1980. Further, though exact dates cannot be determined from the record, evidence does show that the Applicant's father resided and worked in the United States for one full year and portions of other years from 1980 through 1986, for a total of at least 2 ½ to 3 years.

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Conclusion

We find that the record establishes that the Applicant's father was physically present in the United States for periods totaling not less than five years, at least two of which were after her attained the age of 14. Accordingly, the Applicant has established the physical presence requirements for his father under Section 301(g) of the Act.

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 been met.

ORDER: The motion to reopen and reconsider is granted and the appeal is sustained.

Cite as *Matter of M-A-Z-D-*, ID# 12958 (AAO Nov. 5, 2015)