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

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

MATTER OF B-O-R-

DATE: NOV. 19, 2015

APPEAL OF NEW YORK DISTRICT OFFICE DECISION

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

The Applicant, a native and citizen of Norway, seeks a Certificate of Citizenship. *See* section 201 of the Nationality Act of 1940 (the 1940 Act), Pub. L. 76-853, 54 Stat. 1137 (October 14, 1940), 8 U.S.C. § 601 (1951). The District Director, New York, New York, denied the application. The matter is now before us on appeal. The appeal will be dismissed.

The record reflects that the Applicant was born in Norway on [REDACTED] 1951, to a U.S. citizen mother and father who was not a U.S. citizen. The Applicant's parents were married prior to the Applicant's birth. The Applicant seeks a certificate of citizenship pursuant to section 201 of the Nationality Act of 1940 (the 1940 Act), Pub. L. 76-853, 54 Stat. 1137 (October 14, 1940), 8 U.S.C. § 601 (1951), based on the claim that he acquired U.S. citizenship at birth through his mother.

In a May 6, 2014, decision, the Director found that the Applicant did not establish that his mother was physically present in the United States for the requisite period of time prior to the Applicant's birth, and further found that the Applicant did not meet the residency requirements as statutorily required for retention of U.S. citizenship.<sup>1</sup> The Director denied the Form N-600, Application for Certificate of Citizenship, accordingly.

On appeal, the Applicant submitted further evidence to establish that he has met the retention requirements for U.S. citizenship; however, the Applicant did not submit sufficient evidence to show that his mother met the required physical presence in the United States prior to his birth. As such, on July 17, 2015, we issued a Notice of Intent to Deny (NOID) the appeal, advising the Applicant to submit evidence of his mother's physical presence in the United States prior to his birth. On July 23, 2015, the Applicant acknowledged receipt of the NOID, and requested additional time to respond in order to secure more information. We granted the Applicant an extension until September 17, 2015. As of this date, we have received no further information or evidence from the Applicant.

We conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

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<sup>1</sup> The Director's decision refers to section 301 of the Immigration and Nationality Act; however, the Applicant's acquisition of citizenship claim is analyzed pursuant to requirements set forth in section 201(g) of the Act of 1940.

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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 Matter of Baires-Larios*, 24 I&N Dec. 467, 468 (BIA 2008). 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)).

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. INS*, 247 F.3d 1026, 1028 n.3 (9th Cir. 2001). The Applicant in this case was born in 1951. Accordingly, section 201 of the 1940 Act is applicable in this case.

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.

Therefore, in the present matter, the Applicant must establish that his mother resided in the United States for ten years between her birth on [REDACTED] 1927, and his birth on [REDACTED] 1951, and that five of those years followed [REDACTED] 1943, the date on which the Applicant’s mother turned 16 years of age. Furthermore, the Applicant must satisfy the residency requirement of section 201(g) of the 1940 Act, which mandates that the child must reside in the United States or its outlying possessions for 5 years between the ages of 13 and 21 years in order to retain U.S. citizenship.

With respect to his residency requirements under 201(g) of the 1940 Act, the Applicant initially submitted the following documentation with his Form N-600:

- School documents, showing the Applicant attended elementary school in the United States from 1957 to 1963, to demonstrate that the Applicant resided in the United States from the age of [REDACTED] until he was [REDACTED] years old.
- A 2001 Social Security Statement, indicating that the Applicant worked in the United States beginning in 1969, at the age of [REDACTED]

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The Director determined that the evidence presented did not establish that the Applicant resided in the United States for the required five years between the ages of 13 and 21, thus the Applicant did not meet the retention requirements for U.S. citizenship.

On appeal, the Applicant presented additional school documents which indicate that he attended high school in [REDACTED] New York from 1967 to 1969, from the age of [REDACTED] to [REDACTED] years. This evidence, along with the Applicant's Social Security statement, demonstrates that the Applicant resided in the United States from the age of [REDACTED] in 1967 through the age of [REDACTED] in 1972, therefore establishing that he has met the retention requirements for U.S. citizenship.

With respect to the physical presence requirements for the Applicant's mother under section 201(g) of the 1940 Act, the record establishes that the Applicant's mother was born in [REDACTED] New York in 1927, and that she was married in [REDACTED] New York in 1949. However, the evidence in the record does not demonstrate that the Applicant's mother was physically present in the United States for ten years between her birth on [REDACTED] 1927, and the Applicant's birth on [REDACTED] 1951, and that five of those years followed [REDACTED] 1943, the date on which the Applicant's mother turned [REDACTED] years of age.

In the absence of evidence to prove that his mother was physically present in the United States for the requested number of years under 201(g) of the 1940 Act, the Applicant did not establish that he is eligible for a certificate of citizenship.

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.

**ORDER:** The appeal is dismissed.

Cite as *Matter of B-O-R-*, ID# 12269 (AAO Nov. 19, 2015)