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

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

MATTER OF C-M-J-A-

DATE: SEPT. 28, 2015

MOTION OF SAN ANTONIO DISTRICT OFFICE DECISION

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

The Applicant, a native of Mexico, seeks a Certificate of Citizenship. *See* Immigration and Nationality Act (the Act) § 309(c), 8 U.S.C. § 1409(c). The District Director, San Antonio, Texas, denied the application. The Applicant appealed the decision, which we subsequently dismissed. The Applicant submitted a motion to reopen and reconsider, and we rejected the motion as untimely filed. The matter will be reopened *sua sponte*. Our previous decision will be withdrawn. The appeal will be sustained and the application approved.

The Applicant was born in Mexico on [REDACTED] to parents who were not married at the time of her birth. The Applicant's mother was born in the United States on [REDACTED] 1965. The Applicant's father was not a citizen of the United States. The Applicant seeks a certificate of citizenship based on the claim that she acquired U.S. citizenship at birth through her mother.

In an April 11, 2005, decision, the Director found that the Applicant did not acquire U.S. citizenship at birth under section 309(c) of the Act because she could not establish that her mother was physically present in the United States for a continuous period of one year prior to the Applicant's birth.

In our February 11, 2009, decision on appeal, we found that although the record indicated that the Applicant's mother was physically present in the United States prior to the birth of the Applicant, the record did not establish that her mother was present for one continuous year. We dismissed the appeal accordingly.

The Applicant filed a motion to reopen and reconsider on December 5, 2013. On July 14, 2014, we rejected the motion as being untimely filed. We are now reopening the matter *sua sponte*.

We review these proceedings *de novo*. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Because the Applicant was born abroad, she is presumed to be an alien and bears the burden of establishing her 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)).

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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 (9th Cir. 2001) (internal citation omitted). The Applicant in the present matter was born in 1980. Section 309(c) of the Act is therefore applicable to her case.

Section 309(c) of the Act states, in pertinent part:

[A] person born, after December 23, 1952, outside the United States and out of wedlock shall be held to have acquired at birth the nationality status of his mother, if the mother had the nationality of the United States at the time of such person's birth, and if the mother had previously been physically present in the United States or one of its outlying possessions for a continuous period of one year.

Accordingly, the Applicant must establish that her mother is a U.S. citizen who was physically present in the United States for a continuous period of one year before the Applicant's birth on [REDACTED] 1980.

The record includes a copy of the Applicant's birth certificate indicating that she was born on [REDACTED] 1980 at [REDACTED] Mexico. This birth certificate establishes the relationship between the Applicant and her mother. The record also includes a copy of the birth certificate for the Applicant's mother, demonstrating that she was born on [REDACTED] 1965 in [REDACTED], Texas. The record therefore reflects that her mother was a U.S. citizen at birth. As such, in order for the Applicant to acquire U.S. citizenship from her mother under section 309(c) of the Act, she must establish that her mother was physical present in the United States for a continuous period of one year between [REDACTED], 1965, the date of the mother's birth, and [REDACTED] 1980, the date of the Applicant's birth.

In addition to the birth certificates of the Applicant and her mother, the record includes, but is not limited to, the following documentation: school documents for the Applicant's mother and the mother's older sister in [REDACTED] Illinois, and in Texas; an affidavit from the father of the Applicant's mother; an affidavit from the older sister of the Applicant's mother; and evidence that the Applicant's older sister was granted a Certificate of Citizenship on November 30, 1992, on the basis that she acquired U.S. citizenship through her mother. We note that the Applicant's mother died on [REDACTED] 1992.

U.S. Citizenship and Immigration Services (USCIS) records indicate at the time the Applicant's mother was born in 1965 in Texas, the father of the Applicant's mother was working in [REDACTED] Illinois, and that the mother of the Applicant's mother was traveling frequently between Texas and Mexico. USCIS records indicate that the mother of the Applicant's mother was admitted to the United States as a lawful permanent resident on October 30, 1967, and resettled with her husband in [REDACTED] together with the older sister of the Applicant's mother, who was born in 1963 in [REDACTED]

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█, Texas, and the Applicant's mother. The Form N-14 and Form I-90, Application by Lawful Permanent Resident Alien for Alien Registration Receipt Card, dated between January and March 1968, indicate that the mother of the Applicant's mother was residing in █ Illinois.

The sister of the Applicant's mother filed an affidavit in which she states that she and the Applicant's mother lived in █ with their father for ten years, from 1967 to 1977. She adds that her father and the Applicant's mother made several trips to Texas to visit her paternal grandfather during the year 1971 prior to his death in June, 1971.

The record includes a copy of the █ Public Schools registration card for the Applicant's mother, which indicates that she entered public school in █ on September 9, 1970. Another █ Public Schools document demonstrates that, during the 1970-1971 school year, she was in school for 34 3/5 weeks, and present a total of 139 days.

The school records initially indicate that the Applicant's mother transferred to a school in Mexico on May 18, 1971. However, they further indicate that she did not transfer, but rather, she reentered █ public schools on September 8, 1971. The documentation from █ public schools indicate that she attended first grade during the 1971-1972 school year, and was present for 39 weeks, 147½ days; she attended second grade during the 1972-1973 school year, and was present for 38 weeks, 164½ days; she attended third grade during the 1973-1974 school year, and was present for 139 weeks, 180½ days; and that she attended fourth grade during the 1974-1975 school year, and was present for 21 weeks, 78 days.

The affidavit from the sister of the Applicant's mother indicates that she and the Applicant's mother attended █ public schools until 1974, that they then attended Catholic school for two years, and that they returned to █ public school in 1977. Evidence in the record includes school documentation for a Catholic school in █ Illinois indicating that the Applicant's mother attended sixth grade at that school, and documentation from █ Public Schools indicating that she transferred back to public school from the Catholic school on January 17, 1977, verifying the statements in the affidavit of the sister of the Applicant's mother.

The affidavit of the sister of the Applicant's mother states that she and the Applicant's mother returned to Texas in 1977. The record indicates that the Applicant's mother returned to Mexico in 1978, where she gave birth to the Applicant's older sister.

As such, the record reflects that the Applicant has established by a preponderance of the evidence that her mother had at least one year of continuous physical presence in the United States prior to the Applicant's birth. The documentation of the mother of the Applicant's mother, school records, and the affidavit from the sister of the Applicant's mother, all consistently demonstrate that the Applicant's mother was present in the United States in █ Illinois from November 1967 until at least December 31, 1970, a period of over three years. In addition, through the affidavit of the sister of the Applicant's mother and school documentation, the Applicant has established by a preponderance of the evidence that her mother resided in the United States in █ Illinois, from September 1971 until 1977, a period of six years.

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We further note that the Applicant's older sister was granted a certificate of citizenship on November 30, 1992 based on her acquiring U.S. citizenship through her mother. Although the fact that the Applicant's older sister obtained a certificate of citizenship is not determinative in the present case, as each case must be evaluated on the basis of the facts and evidence presented, the record indicates that the former U.S. Immigration and Naturalization Service interviewed the Applicant's mother and made an informed decision regarding the mother's physical presence in approving the Applicant's sister's 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 been met.

ORDER: The appeal is sustained.

Cite as *Matter of C-M-J-A-*, ID# 15639 (AAO Sept. 28, 2015)