U.S. Citizenship and Immigration Services

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

MATTER OF G-L-S-

DATE: FEB. 26, 2016

APPEAL OF HOUSTON FIELD OFFICE 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 (amended by Pub. L. No. 95-432, 92 Stat. 1046 (1978)). The Field Office Director, Houston, Texas, denied the application. The matter is now before us on appeal. The appeal will be sustained.

The record reflects that the Applicant was born in Mexico on [redacted] to married parents. The Applicant's father was born in the United States on [redacted] The Applicant's mother was born in Mexico 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 301(a)(7) of the Act,[1] based on the claim that she acquired U.S. citizenship at birth through her father.

In a decision dated May 14, 2015, the Director found that the Applicant did not establish that her father had the required physical presence in the United States prior to the Applicant's birth as required by former section 301(a)(7) of the Act, in order for the Applicant to acquire U.S. citizenship. The Director denied the Form N-600, Application for Certificate of Citizenship, accordingly.

On appeal, the Applicant submits a brief. Therein, the Applicant contends that her father did have the required physical presence in the United States prior to his birth, based on evidence previously submitted to the record, and that the Director committed an abuse of discretion in denying her Form N-600 Application.

We conduct appellate review on a *de novo* basis. The entire record was reviewed and considered in rendering a decision on the appeal.

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[1] Former section 301(a)(7) of the Act was re-designated as section 301(g) by the Act of October 10, 1978, Pub. L. No. 95-432, 92 Stat. 1046 (1978). The requirements of former section 301(a)(7) remained the same after the re-designation and until 1986.

Because the Applicant was born abroad, she is presumed to be a foreign national 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)).

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 . Accordingly, former section 301(a)(7) of the Act controls her claim to acquired citizenship.

Former section 301(a)(7) of the Act stated that the following shall be nationals and citizens of the United States at birth:

> a person born outside the geographical limits of the United States . . . 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 . . . for a period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years. . .

Therefore, in the present matter, the Applicant must establish that her father resided in the United States for 10 years between her father's birth on and the Applicant's birth on and that at least 5 of those years followed the date on which the Applicant's father turned 14 years of age.

In a sworn statement dated April 23, 2015, the Applicant's father claims that he lived in the United States from the time of his birth until 1934, when his family moved to Mexico. He states that his family returned to the United States in 1935, and lived in the United States until 1943 when they moved back to Mexico. He states that he returned to the United States in 1950, and remained in the United States thereafter, making periodic visits to Mexico to visit family.

The evidence in the record to show that the Applicant's father lived in the United States prior to 1943 includes the following: a copy of the birth certificate of the Applicant's father, registered on October 27, 1938, indicating that he was born in , Texas; a church record indicating that the Applicant's father was baptized on and received the sacrament of confirmation on May 11, 1928, in Texas; copies of school records for the Applicant's father from 1935 to 1938 in Texas; an additional school document to indicate that the Applicant's father was enrolled in Texas for the 1940-1941 school year; and an affidavit dated February 10, 1988, from a childhood friend who attended elementary school with the Applicant's father. The Applicant has therefore established that her father was physically present in the United States for more than 5 years prior to 1941.

With respect to the Applicant's father's physical presence in the United States after 1950 until the birth of the Applicant, the following evidence is included in the record: the birth registration card of the Applicant's eldest sister, indicating that she was born in the United States on [redacted] the Applicant's parent's marriage certificate, indicating that they were married in Texas on [redacted] 1953; the Selective Service registration for the Applicant's father, dated April 16, 1953; and a social security statement for the Applicant's father, indicating he had income in the United States in 1953 and 1954.

In addition, the record includes copies of sworn testimony that the Applicant's father made before the Immigration and Naturalization Service on May 9, 1988, in conjunction with an application for certificate of citizenship filed by the Applicant's younger brother (which was subsequently granted). In these two statements, the Applicant's father testified that he resided in the United States starting in 1953.

Furthermore, the record includes affidavits from two nephews of the Applicant's father. One nephew states that the Applicant's father lived with his family until the time of his marriage in 1953, and adds that he has lived continuously in the United States since at least 1950 or 1951. The second nephew, born in 1950, states that he lived with the Applicant's father from the time of his birth until he married in 1967, and that for as far back as he can remember, the Applicant's father lived and worked in the United States.

The documentary evidence, with the statements from the Applicant's father in 1988, and the affidavits from the Applicant's cousin, establish by a preponderance of the evidence that the Applicant's father was physically present in the United States from at least 1953 until 1958, showing that he was physically present in the United States for 5 years following his 14th birthday and the birth of the Applicant.

As such, the Applicant has established that she acquired U.S. citizenship through her father in accordance with former section 301(a)(7) 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 appeal is sustained.

Cite as *Matter of G-L-S-*, ID# 15407 (AAO Feb. 26, 2016)