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

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

MATTER OF R-A-P-

DATE: JULY 28, 2016

APPEAL OF SAN DIEGO, CALIFORNIA 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 *See* the Nationality Act of 1940 (the 1940 Act), section 201(g), 8 U.S.C. § 601(g), *repealed by* Immigration and Nationality Act, Pub. L. No. 82-414, 66 Stat. 163 (June 27, 1952). An individual born outside the United States who acquired U.S. citizenship at birth, or who automatically derived U.S. citizenship after birth but before the age of 18, may apply to receive a Certificate of Citizenship. For an individual claiming to be a U.S. citizen at birth, who was born between January 13, 1941, and December 24, 1952, to married parents, the individual must have been born to a U.S. citizen parent, and that parent must have resided in the United States for 10 years (5 of which were after the age of 16) before the individual's birth.

The Field Office Director, San Diego, California, denied the application. The Director concluded that the Applicant did not demonstrate that her citizen mother resided in the United States for the requisite period of time.

The matter is now before us on appeal. In the appeal the Applicant submits additional evidence, and claims that the record demonstrates, by a preponderance of the evidence, that her mother met U.S. residence requirements contained in section 201(g) of the 1940 Act. The Applicant also asserts that the Director applied the wrong legal standard and section of law in her case, and that the Director erroneously stated that her testimony was considered in spite of not giving her an opportunity to testify about her mother's presence in the United States, and not asking questions relevant to her citizen mother's presence in the country during her interview.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

The record reflects that the Applicant was born on [REDACTED] to married parents, one of whom was a U.S. citizen at the time of the Applicant's birth. The Applicant seeks a Certificate of Citizenship indicating that she acquired U.S. citizenship at birth from her mother pursuant to section 201 of the 1940 Act.

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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, 1029 n.3 (9th Cir. 2001) (internal quotation marks and citation omitted).

The Applicant was born in [REDACTED] to a U.S. citizen mother and a Mexican citizen father. Accordingly, her citizenship claim falls within the provisions of section 201(g) of the 1940 Act, which provided 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.

Section 104 of the 1940 Act provides that, "the place of general abode shall be deemed the place of residence." 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, 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 her 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)).

II. ANALYSIS

The issue in this case is whether the Applicant has demonstrated that her citizen mother resided in the United States for 10 years prior to the Applicant's birth in [REDACTED] at least 5 years of which occurred after her mother turned 16, in [REDACTED] 1935.¹ The Applicant asserts that the record

¹ The record contains some discrepancies with regard to the Applicant's mother's name; however, the Applicant's parents' marriage and the Applicant's mother's identity and U.S. citizenship were not issues in the Director's decision, and the issues are ultimately not determinative in this case.

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demonstrates, by a preponderance of the evidence, that her mother met U.S. residence requirements contained in section 201(g) of the 1940 Act. The record includes birth, marriage, and death certificate evidence for the Applicant's mother, as well as payment receipt and photograph evidence. The record also contains evidence relating to the Applicant's own school attendance and marriage in the United States. The entire record was reviewed and considered. Upon review, we find that the Applicant has not demonstrated that her mother satisfied the U.S. residence requirements contained in section 201(g) of the 1940 Act.

The Applicant claims that the Director applied the wrong section of law in her case, and a review of the decision reflects that the Director erroneously referred to citizenship requirements set forth in former section 301(a)(7) and section 301(d) of the Act, 8 U.S.C. §§ 1401(a)(7) and 1401(d) in the denial decision. The error does not affect our adjudication on appeal, as we are reviewing the matter *de novo*. The Applicant also claims that the Director erred in not asking questions relevant to her citizen mother's presence in the United States during her interview. The value of such testimony would be limited, as the Applicant can have no personal knowledge of her mother's U.S. residence prior to her birth. In addition, a review of the record reflects that prior to making a final decision in the Applicant's case, the Director sent two separate letters to the Applicant requesting evidence of her mother's residence in the United States, each providing the Applicant with 30 days to submit further evidence. It appears that the Applicant was therefore provided with sufficient opportunity to provide evidence of her mother's residence in the United States.

The Applicant was born in [REDACTED] to a married U.S. citizen mother and a Mexican citizen father. As stated above, to establish acquisition of U.S. citizenship at birth under these circumstances, the Applicant must show that her citizen mother resided in the United States for 10 years prior to the Applicant's birth, at least 5 years of which were after her mother turned 16.

The Applicant's mother's birth certificate reflects that she was born in [REDACTED] in [REDACTED]. The Applicant's mother's marriage certificate states that she married in [REDACTED] California in [REDACTED] 1941, and that she resided in [REDACTED] at that time. The record also contains a copy of the Applicant's brother's birth certificate, reflecting that he was born in [REDACTED] California in [REDACTED]. The birth certificate states that the Applicant's mother resided in [REDACTED] for 16 years prior to the Applicant's brother's birth; however, the statement alone is insufficient to establish the length of the Applicant's mother's residence in the United States prior to the Applicant's brother's birth, as the certificate does not reflect the source of that information, or whether it has been verified.

In addition, the record lacks independent evidence, such as school and medical records, apartment lease or home ownership documents, or any other evidence to corroborate that the Applicant's mother resided in [REDACTED] for 16 years prior to the Applicant's brother's birth. Although, the Applicant indicated, in response to a 2015 USCIS request for evidence, that she requested her mother's social security records, she does not submit the records on appeal. The Applicant also indicated that she was unable to obtain records of her mother's middle school attendance at the [REDACTED] because the school was no longer in existence. She provides no evidence to

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demonstrate attempts to obtain such evidence, though, and the record contains no indication that she attempted to obtain other documentary evidence of her mother's U.S. residence.

The Applicant claims that photograph evidence corroborates that her mother resided in the United States prior to the Applicant's birth, and the record contains a photograph with several children standing around a wagon with the year 1925 written on it. The record also contains a photograph which the Applicant claims portrays her parents, with an annotation written in Spanish, and dated in July 1941. The locations and identity of the individuals in the photographs cannot be determined. And even if this information could be ascertained, the photographs would not establish how long the Applicant's mother resided in the United States. Similarly, payment receipt evidence reflecting that [REDACTED] (whom the Applicant claims raised her mother after the Applicant's maternal grandmother passed away) received 2 payments in [REDACTED] California in September 1939, does not demonstrate that the Applicant's mother resided with him in California, and if she did, how long she resided with him.

Upon review, the record does not demonstrate by a preponderance of the evidence that the Applicant's mother resided in the United States for 10 years prior to the Applicant's birth in [REDACTED] at least 5 years of which were after the Applicant's mother turned 16, in 1935. The photograph and payment receipt evidence does not demonstrate that the Applicant's mother resided in the United States. The record also lacks evidence to corroborate the residence claim on the Applicant's brother's birth certificate. At best, the evidence in the record establishes that the Applicant's mother resided in the United States for up to 3 years, in 1919, 1941, and 1942.

Because the Applicant has not established that her mother met U.S. residence requirements contained in section 201(g) of the Act, it is unnecessary to reach the issue of whether her mother satisfied U.S. residence retention requirements contained in the provision.

III. CONCLUSION

In view of the above, the Applicant has not demonstrated that her mother resided in the United States for 10 years prior to the Applicant's birth, at least 5 years of which occurred after the Applicant's mother turned 16. Accordingly, the Applicant has not established that she acquired U.S. citizenship at birth through her U.S. citizen parent pursuant to section 201(g) of the 1940 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). The Applicant has not met that burden. Accordingly, we dismiss the appeal.

ORDER: The appeal is dismissed.

Cite as *Matter of R-D-C-*, ID# 16897 (AAO July 28, 2016)