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

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

MATTER OF L-J-S-M-

DATE: NOV. 30, 2016

APPEAL OF HARLINGEN, TEXAS 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) section 301(a)(3), 8 U.S.C. § 1401(a)(3), *amended by* Act of Oct. 10, 1978, Pub. L. No. 95-432, 92 Stat. 1046. 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 December 24, 1952, and November 14, 1986, to married U.S. citizen parents, one of the parents must have resided in the United States before the individual's birth.

The Field Office Director, Harlingen, Texas, denied the Form N-600, Application for Certificate of Citizenship. The Director determined that the Applicant did not establish that her mother was a U.S. citizen at the time of the Applicant's birth, and therefore the Applicant did not qualify for a Certificate of Citizenship.

The matter is now before us on appeal. On appeal, the Applicant contends that the evidence submitted to the record establishes by a preponderance of the evidence that his mother was born in the United States, and that she therefore qualifies for U.S. citizenship.

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

I. LAW

The record reflects that the Applicant was born in [REDACTED] in Mexico to married parents. The Applicant claims that both of her parents were U.S. citizens at the time of her birth. The Applicant seeks a certificate of citizenship indicating that she acquired U.S. citizenship at birth from her parents pursuant to former section 301(a)(3) of the Act.

The applicable law for transmitting citizenship to a child born abroad to a U.S. citizen parent 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).

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The Applicant indicates she was born on [REDACTED] to two U.S. citizen parents who were married. Accordingly, her citizenship claim falls within the provisions of former section 301(a)(3) of the Act,<sup>1</sup> which provided, in pertinent part:

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 both of whom are citizens of the United States and one of whom has had a residence in the United States or one of its outlying possessions, prior to the birth of such person . . . .

The Applicant's father was born in Mexico in [REDACTED]. The Applicant claims that her father acquired U.S. citizenship at birth, as the child of a U.S. citizen mother. The citizenship claim of the Applicant's father falls within the provisions of section 301(h) of the Act, 8 U.S.C. § 1401(h),<sup>2</sup> which provides, in pertinent part:

a person born before ... May 24, 1934, outside the limits and jurisdiction of the United States of an alien father and a mother who is a citizen of the United States who, prior to the birth of such person, had resided in the United States.

In addition, should the Applicant establish that only one of her parents was a U.S. citizen at the time of her birth, the Applicant may also be able to claim acquired U.S. citizenship under the provisions of former section 301(a)(7) of the Act, 8 U.S.C. § 1401(a)(7), *amended by* Act of October 10, 1978, Pub. L. No. 95-432, 92 Stat. 1046, which provided 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 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 ten years, at least five of which were after attaining the age of fourteen years: *Provided*, That any periods of honorable service in the Armed Forces of the United States by

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<sup>1</sup> The law in effect at the time of the Applicant's birth in 1958 was former section 301(a)(3) of the Act. The Act of October 10, 1978, redesignated section 301(a)(3) of the Act as section 301(c) of the Act; however, the requirements for acquiring U.S. citizenship under the redesignation did not change after the Act of October 10, 1978. Therefore, although the Director evaluated the Applicant's claim under former section 301(c) of the Act, the requirements for acquiring U.S. citizenship were the same.

<sup>2</sup> The law in effect at the time of the Applicant's father's birth in [REDACTED] was the Act of 1855, which was incorporated into section 1993 of the Revised Statutes of the United States, as amended by the Act of May 24, 1934 (R.S. section 1933). The Act of 1855, however, did not allow for transmission of U.S. citizenship through a U.S. citizen mother. In 1994, Congress retroactively provided for such transmission by adding section 301(h) of the Act, 8 U.S.C. § 1401(h). *See* Section 101(a)(2) of the Immigration and Nationality Technical Corrections Act of 1994.

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such citizen parent may be included in computing the physical presence requirements of this paragraph.

## II. PROCEDURAL HISTORY AND EVIDENCE OF RECORD

The Applicant's birth certificate indicates she was born on [REDACTED] in Mexico, to married parents. The record further includes a copy of the Applicant's parents' marriage certificate, which reflects that they were married in Mexico in 1947. This marriage certificate indicates that at the time of the marriage, they were both Mexican nationals.

In June 2015, the Applicant submitted Form N-600, Application for Certificate of Citizenship. The Director issued a request for evidence (RFE), asking the Applicant to submit biographical information sheets for both parents, and proof that one of her parents resided in the United States prior to her birth. The Director subsequently denied the application, stating that the Applicant did not establish that her mother was a U.S. citizen at the time of her birth.

### A. Applicant's father's family history

The Applicant's father was born in Mexico in [REDACTED]. Documentation submitted to the record indicates that the name of the mother of the Applicant's father was [REDACTED] or [REDACTED]. The record includes a copy of the Applicant's father's birth certificate, which lists his mother as [REDACTED] a Mexican national. The marriage certificate of the Applicant's parents also lists the name of her father's mother as [REDACTED]. The record also includes an extract of a 1900 census record from the Bureau of the Census, Department of Commerce, issued to the Applicant in 2008, indicating that [REDACTED] resided in [REDACTED] Texas, and that she was born in [REDACTED] in Texas. In addition, the record includes copies of the baptismal certificate for the mother of the Applicant's father, indicating that she was born on [REDACTED] and was baptized at a church in [REDACTED] Texas, in November 1899. The baptismal certificate only lists the name of the mother of the Applicant's father's mother, [REDACTED] and does not list the father. The 1943 copy of the baptismal certificate lists the name of the Applicant's father's mother as [REDACTED] while the 2008 copy of the baptismal certificate lists her name as Rebecca Rivas. The Applicant submitted a biographical information sheet in which she states that the name of the mother of her father was [REDACTED]. The birth certificate of the Applicant's father indicates that his maternal grandfather was [REDACTED] and his maternal grandmother was [REDACTED].

In addition, the Applicant submitted evidence from a genealogy website regarding border crossings from Mexico to the United States, indicating that the Applicant's father arrived in the United States on July 8, 1950.

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#### B. Mother's family history

The Applicant's mother was born on [REDACTED]. The record includes a copy of a birth certificate for the Applicant's mother, which was registered in 1944, when the Applicant's mother was [REDACTED] years of age, and which indicates that the Applicant's mother was born in [REDACTED] in Mexico. The record also includes a 2008 extract of a baptismal record from a church in [REDACTED] Texas, which indicates that the Applicant's mother was born in [REDACTED] Texas, in [REDACTED] and was baptized at the church in October 1926. There is also a birth certificate for the Applicant's mother which was registered in 1979, and indicates that she was born in Texas. The record also includes a copy of the marriage certificate for the parents of the Applicant's mother, which indicates that they were married in Texas in 1922.

We have reviewed all the evidence in the record of proceeding.

### III. ANALYSIS

The issue in this case is whether the Applicant can establish that both her parents were U.S. citizens at the time she was born in [REDACTED] and whether one of her parents resided in the United States prior to her birth, in order for the Applicant to qualify for a Certificate of Citizenship under former section 301(a)(3) of the Act. In the alternative, if the Applicant establishes that only one of her parents was a U.S. citizen at the time of her birth, the issue is whether the Applicant can establish that her U.S. citizen parent was physically present in the United States for 10 years (with at least 5 years occurring after the age of 14) before her birth, in order to qualify for a Certificate of Citizenship under former section 301(a)(7) of the Act.

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)).

We find that the Applicant has demonstrated that her father was a U.S. citizen at the time of her birth. However, we find that the evidence of record does not establish that it is more likely than not that her mother was a U.S. citizen at the time of her birth.

In addition, we further find that the Applicant did not establish that she acquired U.S. citizenship through her U.S. citizen father under the provisions of former section 301(a)(7) of the Act.

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#### A. Father's U.S. citizenship

The Applicant's father was born in Mexico in [REDACTED]. As indicated above, in 1994, section 301(h) of the Act, was enacted to allow for acquisition of U.S. citizenship by persons born prior to 1934 through a U.S. citizen mother. Therefore, the citizenship claim of the Applicant's father falls under section 301(h) of the Act.

The birth certificate and marriage certificate of the Applicant's father indicates that his mother is [REDACTED]. The extract of the 1900 census record from the Bureau of the Census, Department of Commerce, issued in 2008, indicates that [REDACTED] resided in [REDACTED] Texas, and that she was born in [REDACTED] in Texas. In addition, baptismal certificates submitted to the record show that [REDACTED] or [REDACTED] was born on [REDACTED] and was baptized at a church in [REDACTED] Texas, in [REDACTED]. The baptismal record only lists the name of the mother of the Applicant's father's mother, [REDACTED] and does not list the father. The birth certificate of the Applicant's father shows that his maternal grandfather is [REDACTED] and his maternal grandmother is [REDACTED] an indication of the variance of the surname of the Applicant's father's mother, [REDACTED] or [REDACTED]. The Applicant submitted a biographical information sheet in which she states that the name of the mother of her father was [REDACTED].

The record establishes that the Applicant's father's mother, [REDACTED] aka [REDACTED] was born in the United States in [REDACTED] and therefore was a U.S. citizen at birth. According to the 1900 census record, the Applicant's father's mother was residing in the United States at that time. The Applicant has therefore established that her father was a U.S. citizen pursuant to section 301(h) of the Act at the time of her birth.

#### B. Mother's U.S. citizenship

The Applicant's mother was born in [REDACTED]. The record includes a birth certificate registered with the Mexican civil authorities in 1944, indicating that that Applicant's mother was born in [REDACTED] Mexico, on [REDACTED]. In addition, the marriage certificate of the Applicant's parents, registered in [REDACTED] Mexico, on November 6, 1947, further indicates that the Applicant's mother was born in [REDACTED] Mexico. Thus, the record contains two documents registered with civil authorities in Mexico that indicate that the Applicant's mother was born in Mexico.

The record includes an extract of a baptismal record from a church in [REDACTED] Texas, indicating that the Applicant's mother was baptized in October 1926, and that she was born in Texas in [REDACTED]. The record further includes a delayed certificate of birth for the Applicant's mother, indicating that she was born in Texas, which was registered in 1979, when the Applicant's mother was [REDACTED] years of age.

The preponderance of the evidence, contained in the two documents registered with the civil authorities in Mexico, the [REDACTED] birth certificate and the 1947 marriage certificate, indicate that the

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Applicant's mother was born in Mexico, and therefore was not a U.S. citizen at the time of the Applicant's birth.

It is incumbent upon the Applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

On appeal, the Applicant contends that her grandfather registered her mother's birth in Mexico in [REDACTED] as her mother needed documentation to show her identity. However, there is nothing in the record to support this contention. Nor does the Applicant provide any explanation why her grandfather could not obtain such identity documentation by claiming that her mother was born in the United States.

The Applicant further contends on appeal that the reason that her mother and grandfather registered her mother's birth certificate in [REDACTED] showing that she was born in Mexico, was due to the onerous requirements for marriage of a foreigner to a Mexican national in Mexico. In support of this contention, the Applicant references an article published in 2000 regarding the difficulty of a U.S. citizen getting married in Mexico. The Applicant also references the current Internet website of the U.S. Consulate in [REDACTED] Mexico, which lists the requirements for a U.S. citizen to marry in Mexico. While the article published in 2000, and the current Internet website of the U.S. consulate in Mexico, describe the requirements and difficulties for a U.S. citizen to marry in Mexico, there is no evidence in the record to establish that these requirements and difficulties existed in Mexico in the 1940s, at the time of the Applicant's parents' marriage.

The Applicant also claims that the marriage certificate of the Applicant's mother's parents, registered in Texas in 1922, indicates that her grandparents were living in the United States in 1922, and therefore establishes that her mother was born in the United States in [REDACTED]. However, there is no evidence in the record to establish how long the Applicant's mother's parents lived in the United States at the time of and following their marriage in 1922.

We therefore find that the Applicant has not established that her mother was a U.S. citizen at the time of her birth by a preponderance of the evidence.

C. Residence of one of the parents in the United States before the Applicant's birth

In addition to the citizenship of the Applicant's parents, former section 301(a)(3) of the Act requires that at least one of the Applicant's parents resided in the United States prior to her birth.

The only evidence in the record that either of the Applicant's parents resided in the United States prior the Applicant's birth is evidence from a genealogy website regarding border crossings from Mexico to the United States, indicating that the Applicant's father arrived in the United States on July 8, 1950. While this evidence establishes that the Applicant's father made an entry into the

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United States in 1950, there is no evidence in the record to establish that either of the Applicant's parents resided in the United States prior to her birth in [REDACTED]

Therefore, we find that the Applicant did not establish that she acquired U.S. citizenship through her parents pursuant to former section 301(a)(3) of the Act.

D. The Applicant's claim for U.S. citizenship under former section 301(a)(7) of the Act

As discussed above, the Applicant has established that her father was a U.S. citizen at the time of her birth. Therefore, a claim for U.S. citizenship under former section 301(a)(7) of the Act may apply to her case.

Under former section 301(a)(7) of the Act, a child born outside the United States who was born to married parents between December 24, 1952, and November 14, 1986, acquires U.S. citizenship provided that one parent is a U.S. citizen, and that parent must have been physically present in the United States for 10 years (with at least 5 years occurring after the age of 14) before the individual's birth.

In this particular case, as discussed above, the Applicant has shown that her father made an entry into the United States in 1950, prior to her birth in [REDACTED]. However, the Applicant did not provide evidence that her U.S. citizen father met the physical presence requirements of former section 301(a)(7) of the Act.

#### IV. CONCLUSION

In view of the above, the Applicant has not demonstrated that both of her parents were U.S. citizens at the time of her birth. Accordingly, the Applicant has not established that she acquired U.S. citizenship at birth through her parents pursuant to former section 301(a)(3) of the Act. In addition, the Applicant has not shown that her father was physically present in the United States for 10 years prior to her birth, with at least 5 years occurring after the age of 14. Accordingly, the Applicant has not established that she acquired U.S. citizenship at birth through her U.S. citizen father pursuant to 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). The Applicant has not met that burden. Accordingly, we dismiss the appeal.

**ORDER:** The appeal is dismissed.

Cite as *Matter of L-J-S-M-*, ID# 10037 (AAO Nov. 30, 2016)