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

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

MATTER OF J-M-Z-A-

DATE: SEPT. 30, 2016

APPEAL OF TAMPA, FLORIDA FIELD OFFICE DECISION

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

The Applicant, a native and citizen of the Dominican Republic, seeks a Certificate of Citizenship. *See* Immigration and Nationality Act (the Act) section 309(c), 8 U.S.C. § 1409(c). 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 acquire citizenship at birth and who was born after December 23, 1952, to an unmarried U.S. citizen mother, the mother must have been physically present in the United States for 1 continuous year before the individual's birth.

The Field Office Director, Tampa, Florida, denied the application. The Director concluded that the Applicant did not provide sufficient documentation to establish that his mother was physically present in the United States or one of its outlying possessions for at least 1 year prior to his birth.

The matter is now before us on appeal. In the appeal, the Applicant submits additional evidence of his mother's physical presence in the United States prior to his birth, and asserts that the evidence submitted is sufficient to establish that he is eligible to receive a Certificate of Citizenship.

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

I. LAW

The record reflects that the Applicant was born on [REDACTED] in the Dominican Republic to unmarried parents, a U.S. citizen mother and a Dominican Republic citizen father. The record also reflects that the Applicant's parents did not subsequently marry. The Applicant seeks a Certificate of Citizenship indicating that he acquired U.S. citizenship at birth from his mother pursuant to section 309(c) of the Act.

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).

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The Applicant was born in [REDACTED] to an unmarried U.S. citizen mother. Accordingly, his citizenship claim falls within the provisions of section 309(c) of the Act, which provides, 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.

II. PROCEDURAL HISTORY AND EVIDENCE OF RECORD

The Applicant filed Form N-600, Application for Certificate of Citizenship, indicating that he acquired U.S. citizenship at birth from his mother pursuant to former section 309(c) of the Act.

The record shows that the Applicant was initially admitted to the United States in March 1986, as a visitor, and adjusted his status to that of a lawful permanent resident in September 1986, based on an immigrant visa petition filed on his behalf by his U.S. citizen mother. The Applicant returned to live the Dominican Republic in 1992, and was deemed to have abandoned his lawful permanent resident status. The Applicant states that he subsequently returned to the United States in April 2015.

Evidence submitted in support of the N-600 application included the following: a copy of the Applicant's birth certificate; a copy of the Applicant's mother's 2008 U.S. passport; evidence on the Applicant's mother's physical presence in the United States from 2003 to 2012; a copy of the death certificate of the Applicant's mother; and a copy of an obituary for the Applicant's mother. In part 5 of the Form N-600, the Applicant represented that his mother was physically present in the United States from September 1963 until her death in [REDACTED]

In April 2015, the Director issued a request for evidence (RFE) asking the Applicant to provide proof of his mother's citizenship and proof of his mother's physical presence in the United States prior to his birth.

In response to the RFE, the Applicant submitted documentation received through a Freedom of Information Act (FOIA) request to the Passport Services Directorate, U.S. Department of State. The documentation included: a copy of the Applicant's mother's 1946 passport application; a 1946 affidavit of the Applicant's mother to explain protracted foreign residence; a copy of a 1953 Certificate of the Loss of Nationality of the United States for the Applicant's mother; documentation dated 1963, indicating that the Department of State reversed its previous determination in the expatriation of the case of the Applicant's mother; and copies of the Applicant's mother's passport applications for 1963, 1972, 1986, and 2008.

The Director concluded that the documentation in the record did not establish that the Applicant's mother was physically present in the United States or one of its outlying possessions for 1 year prior to the Applicant's birth in [REDACTED] as required under section 309(c) of the Act.

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On appeal, the Applicant submits further evidence, including documentation from a genealogy resources website, which shows that his mother entered Puerto Rico on two occasions, on December 17, 1925, and on March 30, 1947. The Applicant further submits an affidavit from a person who claims to be the sister of the Applicant's mother, and who states that the Applicant's mother traveled to Puerto Rico on or about 1946 or 1947 to reside with her mother, the Applicant's grandfather, and that she resided there for close to 2 years.

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

III. ANALYSIS

The Applicant has established that his mother is a U.S. citizen as required for acquisition of citizenship at birth under section 309(c) of the Act by submitting a copy of his birth certificate and copies of his mother's U.S. passport.¹ The issue in this case is whether the Applicant has shown that his mother was physically present in the United States for a continuous period of 1 year prior to his birth in [REDACTED] as required under section 309(c) of the Act.

On appeal, the Applicant contends that there are two time frames during which his mother was physically present in the United States prior to his birth, the first beginning in [REDACTED] when his mother was 2 years old, and the second beginning in 1947, after she received her U.S. passport. The Applicant states that the documents he obtained through the FOIA request include numerous inconsistencies, including typos, incorrect dates, incorrect addresses, and the possibility that some of the documents were not translated accurately. The Applicant contends that despite these inconsistencies, the documents, together with the affidavit from a person who attested that his mother was in Puerto Rico for 2 years during the 1940s, establish that his mother had physical presence for 1 continuous year prior to his birth.

Because the Applicant was born abroad, he is presumed to be a foreign national 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 his case. *See Matter of*

¹ The record indicates that the Applicant's mother was initially determined to be a U.S. citizen, and granted a U.S. passport, in 1946. In 1953, the U.S. Embassy in [REDACTED] Dominican Republic, determined that the Applicant's mother lost her U.S. citizenship, as she expatriated herself by voting in the Dominican political election in 1947. In 1963, the Applicant's mother again applied for a U.S. passport. The Commissioner of the U.S. Immigration and Naturalization Service (INS) determined that the elections in the Dominican Republic between 1941 and 1960, and circumstances under which they were conducted, were not political elections, and therefore a person voting in these elections was not considered to have committed an expatriating act. Therefore, the Certificate of Loss of Nationality issued to the Applicant's mother was to be disregarded. The record indicates that the Applicant's mother was issued a U.S. passport in 1963, and subsequently issued U.S. passports in 1972, 1986, and 2008.

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Chawathe, 25 I&N Dec. 369, 376 (AAO 2010) (citing *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989)).

Upon review, we find that the documentation submitted does not show it is more likely than not that the Applicant's mother was physically present in Puerto Rico for a continuous period of 1 year, as required under section 309(c) of the Act.

A. The Physical Presence of the Applicant's Mother Beginning in [REDACTED]

The record includes a copy of the passport application of the Applicant's mother dated October 1946. The passport application indicates that the Applicant's mother was born on [REDACTED] in the Dominican Republic, to a U.S. citizen father. The passport application includes an Affidavit by a Native American to Explain Protracted Foreign Residence. In the affidavit, the Applicant's mother states that she never resided in the United States, that her mother died when she was 2 years old, and she was raised by her aunt. The Applicant's mother further states that she made one visit to Puerto Rico when she was 2 years old for a couple of months.

On appeal, the Applicant states that after the death of his grandmother, the mother of his mother, his mother went to live with her father in Puerto Rico, and lived in Puerto Rico for 2 or 3 years, and not the couple months stated in the 1946 Affidavit by a Native American to Explain Protracted Foreign Residence. The Applicant states that at the age of 5, his mother was sent back to the Dominican Republic to be raised by her aunt. The Applicant claims that the correct year of birth for his mother is [REDACTED] and that discrepancies regarding his mother's date of birth corroborate his contention that she resided in Puerto Rico for 2 or 3 years beginning in [REDACTED].

The record indicates that the Applicant's mother listed her date of birth as [REDACTED] on her 1946 passport application, as well as on her passport applications of 1963 and 1972. The Applicant states that his mother corrected her date of birth to [REDACTED] in 1986. The [REDACTED] death certificate of the Applicant's mother lists her date of birth as [REDACTED].

The Applicant submitted evidence from a genealogy website which shows that his mother arrived in Puerto Rico on December 17, 1925. The document indicates that the Applicant's mother was using the date of birth [REDACTED] when entering Puerto Rico in [REDACTED].

While all the documentation submitted to the record shows that the Applicant's mother was born on [REDACTED] there are discrepancies as to whether the year of his mother's birth was [REDACTED] or [REDACTED]. The Applicant maintains that his mother's correct year of birth is [REDACTED]. In the 1946 Affidavit by a Native American to Explain Protracted Foreign Residence, the Applicant's mother states that she visited Puerto Rico when she was 2 years old. The information from the genealogy website indicates that she arrived in Puerto Rico in [REDACTED]. Therefore, if she was 2 years old at the time of her arrival in Puerto Rico in [REDACTED] she would have been born in [REDACTED] which supports the Applicant's contention that his mother was born in [REDACTED].

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Regardless of the year of birth of the Applicant's mother, the 1946 Affidavit by a Native American to Explain Protracted Foreign Residence indicates that she only lived in Puerto Rico for a couple months when she was 2 years old. Although the Applicant contends that the mother lived in Puerto Rico for 2 to 3 years after her arrival in [REDACTED] and was sent back to the Dominican Republic to live with her aunt at the age of 5, there is no evidence to support these contentions by the Applicant.

Therefore, the Applicant has not provided sufficient evidence to show that his mother was physically present in the United States for a continuous period of 1 year following her arrival in Puerto Rico to visit her father in [REDACTED]

B. The Physical Presence of the Applicant's Mother Beginning in 1947

The record indicates that the Applicant's mother applied for a U.S. passport in 1946, and the passport was issued to her on February 21, 1947. On appeal, the Applicant submits evidence from a genealogy resources website, which shows that Applicant's mother arrived in Puerto Rico on March 30, 1947.

The record includes a Certificate of the Loss of Nationality of the United States, dated 1953, for the Applicant's mother. This document states that the Applicant's mother last lived in the United States in Puerto Rico, and that she last left the United States on December 31, 1947.

Thus, the record indicates that the Applicant arrived in Puerto Rico in March 1947, and left Puerto Rico in December 1947, a period of less than 1 year.

On appeal, the Applicant states that although there are inconsistencies in the documentation regarding his mother's travel to Puerto Rico in 1947, the amount of time she spent in Puerto Rico, and whether she voted in elections in the Dominican Republic in 1947, that the record overall still reflects that his mother met the requirement of 1 year of continuous physical presence in the United States. The Applicant states that if his mother arrived in Puerto Rico on March 30, 1947, as indicated in the evidence from the genealogy resources website, and that she departed Puerto Rico in December 1947, as indicated in the 1953 Certificate of the Loss of Nationality of the United States, that it would not have been possible for his mother to be in the Dominican Republic to vote in the election on May 16, 1947, which is also indicated in the 1953 Certificate of the Loss of Nationality of the United States. The Applicant therefore contends that there was a typo in the date of the election, and it should have been 1948 instead of 1947. However, the general elections were held in the Dominican Republic on May 16, 1947, not in 1948.² Although unresolved inconsistencies exist with the evidence on the Applicant's mother travel and activities between March and December 1947, the documentation in the record, without more, does not provide a sufficient basis for showing

² See, e.g., *Dominican Republic (1902-present)*, University of Central Arkansas, Political Science, <http://uca.edu/politicalscience/dadm-project/western-hemisphere-region/dominican-republic-1902-present/> (last visited September 20, 2016).

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that the Applicant's mother was physically present in Puerto Rico for a period of 1 year following her arrival in 1947.

The Applicant submits an affidavit from a person who states that she is the sister of the Applicant's mother. The person filing the affidavit states that, to the best of her recollection, the Applicant's mother traveled to Puerto Rico on or about 1946 or 1947 to reside with her father and stepmother, and that the Applicant's mother resided in [REDACTED] Puerto Rico for close to 2 years. However, the person filing the affidavit does not provide any evidence to substantiate the claimed relationship, and consequently, how she would acquire knowledge of the facts in the affidavit. Furthermore, the affidavit is a generalized statement, indicating that the person making the statement remembers that the Applicant's mother traveled to Puerto Rico in either 1946 or 1947 to reside with her father, but does not explain how she knows about this trip, and does not provide details regarding her knowledge of the Applicant's mother's residence at that time. The Board of Immigration Appeals has held that when testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the affected party to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

In sum, the Applicant has not shown that it is more likely than not that his mother was physically present in the United States for a continuous period of 1 year following her arrival in Puerto Rico to visit her father in 1947, or beginning in [REDACTED]

IV. CONCLUSION

In view of the above, the Applicant has not demonstrated that his mother was physically present in the United States or one of its outlying possessions for a continuous period of 1 year. Accordingly, the Applicant has not established that he acquired U.S. citizenship at birth through his U.S. citizen mother pursuant to section 309(c) 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.

ORDER: The appeal is dismissed.

Cite as *Matter of J-M-Z-A-*, ID# 114115 (AAO Sept. 30, 2016)