



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

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

In Re: 28487269

Date: OCT. 24, 2023

Appeal of Miami, Florida Field Office Decision

Form N-600, Application for Certificate of Citizenship

The Applicant seeks a Certificate of Citizenship to reflect that he acquired U.S. citizenship at birth from his mother under section 301(g) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(g).

The Director of the Miami, Florida Field Office denied the application and a subsequent motion to reopen and reconsider the adverse decision, concluding that the Applicant did not establish as required that his U.S. citizen mother had the requisite prior physical presence in the United States to transmit her citizenship to him at birth.

On appeal, the Applicant references previously provided evidence, and asserts that the Director erred by not giving this evidence proper weight in view of the special circumstances in his case and his inability to obtain certain primary documents despite his best efforts.

The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

**I. LAW**

The record reflects that the Applicant was born in Venezuela in [ ] 1988 to married parents. His mother is a U.S. citizen born in New York in [ ] 1961, and his father is a citizen of Venezuela. The applicable law for transmitting U.S. citizenship to a person born abroad when one parent is a U.S. citizen is the statute that was in effect at the time of the person's birth. *Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1029 n.3 (9th Cir. 2001) (internal quotation marks and citation omitted).

Because the Applicant was born in 1988, current section 301(g) of the Act, as in effect since November 14, 1986, governs his citizenship claim. Section 301(g) of the Act provides in relevant part that a person born abroad to one noncitizen and one U.S. citizen parent will be a national and citizen of the United States at birth if the U.S. citizen parent "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 five years, at least two of which were after attaining the age of fourteen years.”

Because the Applicant was born abroad, he is presumed to be a noncitizen and bears the burden of establishing his claim to U.S. citizenship by a preponderance of credible evidence. *Matter of Baires-Larios*, 24 I&N Dec. 467, 468 (BIA 2008). Under the preponderance of the evidence standard, the Applicant must show that his citizenship claim is “probably true,” or “more likely than not.” *Matter of Chawathe*, 25 I&N Dec. at 376.

## II. ANALYSIS

There is no dispute that the Applicant’s mother is a U.S. citizen. The only issue on appeal is whether the Applicant has met his burden of proof to establish that his mother was physically present in the United States for a total of five years before his birth in [REDACTED] 1988, and that at least two of those years were after the mother’s 14th birthday in [REDACTED] 1975. We have reviewed the entire record and for the reasons explained below conclude that the Applicant has not met this burden.

### A. Evidence and Procedural History

In support of the instant Form N-600 and in response to the Director’s subsequent notice of continuance, the Applicant submitted evidence including copies of his mother’s cancelled U.S. passports, her driver’s license, medical records, documents relating to his maternal grandfather, real estate deeds, photographs, and affidavits. In her 2018 affidavit, the Applicant’s mother attested that she resided in the United States with her parents from birth until July 1962, when the family returned to Venezuela. She stated that she thereafter spent approximately four months each year in Florida, where her parents had purchased a home. She explained that the family would frequently travel from Venezuela to [REDACTED] in her father’s private plane, but that she could no longer recreate the dates of her travel, because at the time “U.S. immigration officials did not stamp passports of U.S. citizens who were arriving at private airports.” The mother further stated that after finishing high school in Venezuela she enrolled in a college in New York State in August 1979, but left after the first semester and moved to [REDACTED] where she remained until September 1980; she then returned to Venezuela and married the Applicant’s father. The mother reported that because her spouse, like her father, was a private pilot she continued to travel to the United States every month from 1981 until 1983, and estimated that she would spend “over a half a year” in the country each year during this period; after her parents and two siblings perished in a 1983 plane crash, she spent “a considerable amount of time in the United States taking care of [her] parents’ unfinished affairs.” The mother explained that she owned multiple residences in the State of Florida throughout her life, but did not have documentation of her early life in the United States other than photographs and some correspondence.

The Director determined that the mother’s statements and supporting evidence was not adequate to establish that she was physically present in the United States for the requisite period of five years before the Applicant’s birth. Specifically, the Director concluded that although the evidence was consistent with the mother’s claims that she frequently traveled to the United States during the relevant period prior to 1988, the U.S. entry stamps in her passports were not sufficient to establish how long she stayed in the country during those visits. The Director acknowledged the submission of affidavits



attesting to the mother's presence in the United States, but found that they had limited probative value as they lacked corroboration and, in some instances, were inconsistent with other evidence. For example, while the mother's cousin attested that the mother lived with him in New York from August 1979 until 1980, the entry stamps in the mother's passport indicated that she traveled outside of the United States on two separate occasions during this period. Lastly, the Director pointed out that the Applicant did not provide documentation of his mother's claimed U.S. college attendance since August 1979, or evidence that such documentation was not available or could not be obtained.

On a subsequent motion to reopen and reconsider the Applicant submitted supplemental evidence, including additional affidavits, copies of his maternal grandfather's and his father's pilot licenses, flight logs, reports concerning the tragic deaths of his maternal grandparents, photographs, and real estate records. The Director determined that the information contained therein was not sufficient to overcome the evidentiary deficiencies concerning the mother's prior physical presence in the United States. In particular, the Director found that the flight logs were not probative of the timing and duration of the mother's visits to the United States because they did not include the names of the passengers, and further noted that the information about the deaths of her parents and siblings did not constitute evidence of her physical presence in the country. The Director considered the additional affidavits the Applicant submitted on motion, but concluded that they did not have significant weight in demonstrating the mother's actual presence in the United States during the relevant period because they were not supported by primary evidence, and the Applicant did not show that such primary evidence was not available. The Director acknowledged a statement from a private investigator that despite considerable efforts he was not able to obtain records of the mother's claimed attendance at a [redacted] college, but explained that this was not sufficient to show that the mother was in fact a college student and physically present in the United States within the 1979-1980 timeframe. Lastly, the Director determined that the photographs did not have great probative value, as they did not show any unique U.S.-specific landmarks, and the identities of the individuals depicted in those photographs could not be confirmed.

The Applicant does not submit any additional evidence on appeal. He avers that he had previously provided extensive documentation and detailed affidavits to show that his mother spent a considerable amount of time in the United States while growing up, spending every summer and winter holidays in the country, attending college in [redacted] New York, and continuing to live in and visit the United States periodically with her family as an adult. He asserts that the Director did not properly evaluate this evidence, which he claims shows that his mother satisfied the prior U.S. physical presence requirement for transmission of citizenship under section 301(g) of the Act. We disagree.

#### B. The Mother's Physical Presence in the United States

Although not defined in the Act and regulations, "physical presence" for purposes of section 301(g) of the Act refers to the actual time a person is in the United States, regardless of whether they have a residence in the United States. *See generally* 12 USCIS Policy Manual H.2(E)(1); *see also* 7 FAM 1133.3-4 (explaining that the term "physical presence" has its literal meaning and is computed by the actual time spent in the United States; while usually it is not necessary to compute U.S. physical presence down to the minute, if it is not clear that the parent has more than enough physical presence in the United States, it is important to obtain the exact dates of the parent's entries and departures).



## 1. Physical Presence from 1961 to 1975

Aside from the mother's 1961 birth certificate, the record does not include evidence to support her claim that she lived with her parents in New York and Pennsylvania until July 1962, or that she thereafter would spend summer and winter holidays each year in Florida or in other parts of the United States, as she had indicated in her updated 2020 affidavit the Applicant submitted on motion. Although some of the affiants indicated generally that they either met the mother when she was a child or that they had knowledge of her residence in Florida in the 1970s, they did not provide specific information about her actual physical presence in the United States during this period. Thus, the mother's and the affiants' general statements that she spent time in the United States as a child are not sufficient to determine when and how long she was physically present in the United States before she turned 14 years of age in [redacted] 1975.

## 2. Physical Presence from 1975 to 1988

Although the evidence, including the family's U.S. property ownership records and the mother's frequent U.S. visits, points to her strong ties to the United States since the late 1970s, the primary evidence of the time she actually spent in the country within this period is limited. As discussed in the Director's decision, while the U.S. entry stamps in the mother's U.S. passports<sup>1</sup> show that she visited the United States on multiple occasions between 1978 and 1987, the passports do not contain corresponding exit stamps to indicate how long she remained in the country during each of those visits. The affidavits the Applicant submitted are not adequate to overcome the lack of such primary evidence of his mother's physical presence in the United States.

When affidavits are submitted to establish eligibility for a requested benefit, we determine their evidentiary weight based on the extent of the affiants' personal knowledge of the events they attest to, and the plausibility, credibility, and consistency of their statements with each other and evidence in the record. *Matter of E-M-*, 20 I&N Dec. 77, 81 (Comm'r 1989). We cannot afford the affidavits in this case significant weight, as they are neither sufficiently detailed nor corroborated by other evidence.

The mother's paternal uncle indicated that prior to the loss of her parents, the mother resided in the United States and Venezuela, and that she lived in several residences in Florida throughout her life. Although he stated that based on his recollection the Applicant's mother "spent no fewer than six months every year" in the United States, he did not identify a specific timeframe and did not explain the basis for this statement. The uncle's general testimony that the Applicant's mother studied at a college in New York "from 1979 until mid-1980" and that she "lived in the United States for more than the U.S. citizenship qualifying period before [the Applicant's] birth" is not sufficient, absent corroborating evidence, to determine when and how long she was actually physically present in the United States. The mother's cousin, in turn, indicated generally that the mother lived with him in [redacted] [redacted] from August 1979 until 1980; the Applicant's maternal uncle attested only that the mother "lived in both the United States and Venezuela" and "spent more than six . . . months in the United States each year." The remaining affidavits are similarly lacking in detail and specificity. For example, an individual who identified herself as a friend of the Applicant's parents stated that she first

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<sup>1</sup> Issued at the U.S. Embassy in Caracas, Venezuela in 1977, 1980, and 1986.



met his mother in 1963; she attested that the mother lived in several residences in Florida, studied at the New York college “during the late 1970s and early 1980s,” and “had to be present in the United States for extensive periods of time while she was under medical treatment at [redacted] in Minnesota for a skin condition throughout the late 70s.” Again, the affiant did not specify when and how long the Applicant’s mother was in the United States while she spent time in Florida and Minnesota, and the Applicant provided no documentary evidence of the timing and duration of his mother’s college attendance. We also note that the record of the mother’s healthcare visits, which appear to have taken place in February and December 1979, is not consistent with the affiant’s claim of the mother’s extensive treatment-related presence in the United States in the 1970s. Although the Applicant submitted an affidavit from the mother’s college classmate,<sup>2</sup> the classmate stated only that they had many classes together “at the end of 1970s,” and “participated in other activities,” but the college “closed in 1980.” Another affiant, the mother’s friend and real estate agent, attested that she met the mother during the purchase of her father-in-law’s house in 1979, and had personal knowledge that the Applicant’s parents “resided there from time to time in the 1980s.” However, as the affiant indicated that she was unable to provide the exact dates they were in Florida, and the record shows that the Applicant’s mother frequently traveled outside of the United States during this period, the affidavit is not sufficient to determine how much time she actually spent in the United States in the 1980s. According to another individual’s testimony, the Applicant’s mother and her family “resided from time to time in a house they owned in Florida throughout the 1970s” and the mother “spent lots of time in the U.S. during her childhood and young teenage years.” Like the other affidavits, however, these statements are neither sufficiently detailed nor corroborated, and we cannot give them significant weight in establishing the specific periods of the mother’s actual physical presence in the United States.

We recognize that there is some evidence pointing to the mother’s presence in the United States in the 1970s and in the 1980s, such as the U.S. passport entry stamps, copies of envelopes with postal stamps indicating that the mother sent correspondence from the United States to Venezuela in September 1979, a record of her 1979 medical visits, as well as evidence that she had a Florida driver’s license valid until 1985, and that her family owned real estate in the United States in the late 1970s. While this evidence indicates that the Applicant’s mother likely spent some time in the United States within that timeframe, the record as a whole is not sufficient to conclude that her actual physical presence in the United States in the aggregate during the relevant period before the Applicant’s birth in 1988 amounted to the requisite five years with at least two years following the mother’s 14th birthday in [redacted] 1975.

We also acknowledge the Applicant’s statements that due to the passage of time and the untimely deaths of his maternal grandparents, primary evidence of his mother’s presence in the United States is no longer available, and that he was not able to obtain documentation of her college attendance despite his best efforts. Nevertheless, the burden of proof in these proceedings rests with the Applicant, and “when doubts exist concerning a grant of [citizenship], generally at least, they should be resolved in favor of the United States and against the claimant.” *United States v. Manzi*, 276 U.S. 463, 467 (1928).

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<sup>2</sup> The record does not include evidence of the affiant’s own enrollment and attendance at that college.



### III. CONCLUSION

The Applicant has not met his burden of proof to demonstrate that his mother satisfied the prior U.S. physical presence requirements to transmit her citizenship to him at birth under section 301(g) of the Act. Consequently, the Applicant is not eligible for a Certificate of Citizenship, and his Form N-600 remains denied.

**ORDER:** The appeal is dismissed.