



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

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

In Re: 21899043

Date: JUN. 22, 2022

Appeal of San Antonio, Texas Field Office Decision

Form N-600, Application for Certificate of Citizenship

The Applicant, who was born abroad, seeks a Certificate of Citizenship to reflect that he acquired U.S. citizenship from his U.S. citizen father pursuant to sections 301(g) and 309(a) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1401(g), 1409(a), amended by Act of November 14, 1986, Pub. L. 99-653, 100 Stat. 3655. The Director of the San Antonio, Texas Field Office denied the Form N-600, Application for Certificate of Citizenship, concluding that the evidence was insufficient to establish, as required, that the Applicant's father had the requisite physical presence in the United States to transmit his U.S. citizenship to the Applicant at birth.

On appeal, the Applicant submits additional evidence relating to his U.S. citizen father's physical presence in the United States. 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  2021 in Mexico to a U.S. citizen father and a Mexican citizen mother. The Applicant's parents were never married to each other. The Applicant seeks a Certificate of Citizenship indicating that he acquired U.S. citizenship at birth from his father pursuant to section 301(g) 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).

Because the Applicant was born abroad after 1986 to a U.S. citizen father and a foreign national mother who were unmarried, his acquisition of citizenship claim falls within the provisions of current section 301 of the Act, which provides, in pertinent part:

The following shall be nationals and citizens of the United States at birth:

....

(g) 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 five years, at least two of which were after attaining the age of fourteen years [. . .]

The term “physically present” refers to the actual time a person is in the United States, regardless of whether they have a residence in the United States. *See* 12 *USCIS Policy Manual* H.2(E)(1), <https://www.uscis.gov/policymanual> (explaining the difference between “residence” and “physical presence” in the context of citizenship proceedings).

Because the Applicant was born out of wedlock, he must also satisfy the requirements of section 309(a) of the Act, which pertain to legitimation.

As 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. *Matter of Baires*, 24 I&N Dec. 467, 468 (BIA 2008). Under the preponderance of the evidence standard, the Applicant must demonstrate that his claim is “probably true,” or “more likely than not.” *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

## II. ANALYSIS

The record contains the Applicant’s birth certificate showing that he was born abroad in Mexico in [ ] 2021 to a U.S. citizen father, J-S-,<sup>1</sup> and a foreign national mother and reflects that his parents were not married. The Director determined that the Applicant did not acquire citizenship at birth through his U.S. citizen father because he had not demonstrated that his father was physically present in the United States for a period or periods(s) totaling at least five years before the Applicant’s birth, two of which were after his father’s 14th birthday in [ ] 2015, as required under section 301(g) of the Act.<sup>2</sup>

On appeal, the Applicant contends the Director’s decision finding that the physical presence requirement pertaining to his U.S. citizen father was not met was erroneous, and he submits additional evidence to support his claim. We have reviewed the entire record and find that the evidence, considered in its totality, is not sufficient to establish the Applicant’s father satisfied the five-year overall physical presence requirement to transmit citizenship under section 301(g) of the Act.

To demonstrate his father’s physical presence in the United States for an overall period of five years prior to his birth in [ ] 2021, the Applicant submitted a copy of his father’s 2001 U.S. birth certificate,

---

<sup>1</sup> We use initials to protect the privacy of individuals.

<sup>2</sup> Because our finding here that the Applicant did not establish that his father satisfied the physical presence requirement for transmission of citizenship is dispositive of his appeal, we decline to reach and hereby reserve the issue of whether he has also satisfied the legitimation requirements applicable to children born out of wedlock under section 309(a) of the Act. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (“courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach”); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

the biometric page of his father's U.S. passport, the first page of a vehicle sales contract for a 2018 Buick listing his father as the buyer, and affidavits from various family members. The birth certificate and passport confirm that the Applicant's father was physically present in the United States on the date of his birth in [REDACTED] 2001, but do not indicate how long he was here after his birth. As noted, only the first page of the vehicle contract was submitted, and that page is not dated or signed by the Applicant's father and therefore does not show that his father was physically present in the United States prior to the Applicant's birth. Next, the Director properly determined the affidavits from the Applicant's family members, including the Applicant's paternal grandmother and aunt, were insufficient to establish his physical presence. In determining the evidentiary weight of affidavits, we assess 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, 79-80 (Comm'r 1989). Here, the submitted affidavits briefly assert that J-S- was born in the United States and has resided here ever since but provide no probative details regarding J-S-' physical presence since birth, such as how long he has lived at his current U.S. address; if he has lived at any other addresses; and if, when, and where in the United States he has worked, studied, or otherwise been involved in his community. Although suggested in the Director's request for additional evidence (RFE) to demonstrate the physical presence of J-S-, the Applicant did not provide the Director with any of his father's school, employment, or military records; Internal Revenue Service tax transcripts or federal tax returns; deeds, mortgages, or leases reflecting the residence of J-S-; affidavits from churches, unions, or other organizations; and U.S. social security quarterly reports. Consequently, while the evidence before the Director indicates that the Applicant's father, J-S-, was physically present in the United States at the time of his birth, it did not sufficiently establish his physical presence for the requisite period(s) totaling five years prior to the Applicant's birth as required.

In support of his appeal, the Applicant submits a copy of his father's Texas Academic Achievement Record (high school transcript), his father's 2020 tax return, a full copy of the vehicle sales contract previously submitted, and a letter from an employer who contracted his father's services in the past.<sup>3</sup> The additional evidence still does not establish the required five-year overall U.S. physical presence period for J-S-.

The high school transcript indicates J-S- graduated from high school in Texas in May 2020 and was awarded credit for classes completed the second semester of the 2015-2016 school year (beginning approximately January 2016) through the second semester of the 2019-2020 school year, covering approximately four and a half academic years (which, in the United States, run for about nine months, from August/September to May/June). The academic record, therefore, sufficiently demonstrates that, during the period from approximately January 2016 to May 2020, the Applicant's father was physically present in the United States for an estimated three years and four and a half months, all of which occurred after his 14th birthday in October 2015.

Additionally, per the Applicant's father's 2020 tax return submitted on appeal, his principal place of employment was in Texas and his gross income was \$38,016. Because J-S-'s income surpassed the

---

<sup>3</sup> We note that a January 2022 debit authorization confirmation letter from J-S-'s credit union was also provided on appeal. However, it is not probative of his physical presence in the United States because it was dated after the Applicant's birth in [REDACTED] 2021.

annual minimum wage for that year, his tax return reflects he was more likely than not a full-time employee in the United States during 2020. As such, the tax return establishes the Applicant's father's physical presence for the remaining seven months of 2020 after the Applicant's May 2020 graduation, demonstrating a total of approximately four years of physical presence.

The full copy of the vehicle contract for the 2018 Buick submitted on appeal lists the Applicant's father's and the seller's addresses as being in Texas and indicates he signed the contract in January 2020, sufficiently showing his physical presence in the United States on that date. However, although the contract indicates a 36-month term with payments beginning in March 2020, the Applicant did not submit any evidence documenting any payments he made and showing that he made any such payments while he was physically in the United States. Consequently, the vehicle contract does not establish any additional physical presence period outside of that already established for 2020.

Lastly, J-S-' employer, in her letter, indicates she owns a Texas company and that J-S- worked for her "in 2021 [by performing] contracted services for numerous jobs throughout the year." The employer's letter also states that she has known J-S- for four years but provides no further details. The letter provides insufficient knowledge of the events it attests to for it to be accorded significant weight. *See Matter of E-M-*, 20 I&N Dec. at 79-80. For example, the letter does not provide specific dates of J-S-' employment in 2021, indicate that he was contracted to provide services in the United States, or otherwise describe the nature of those services. As such, it is unclear if J-S- was specifically working for this employer inside the United States for any period(s) before the Applicant's birth in  2021. Similarly, the employer's letter also does not reflect any personal knowledge as to where J-S- was residing during the four years she claims to have known him. Accordingly, the letter does not establish that the Applicant's father was physically present in the United States for any specific time period in 2021 prior to the Applicant's birth.

In conclusion, the Applicant has not met his burden to demonstrate his U.S. citizen father's physical presence in the United States for the requisite period prior to the Applicant's birth. As stated, the affidavits and letters from the Applicant's family and his father's employer do not provide sufficiently probative details to establish the Applicant's father's physical presence in the United States during the relevant periods and are not corroborated by other evidence. The other relevant evidence in the record, including his father's Texas Academic Achievement Record and tax return submitted on appeal, shows that the Applicant's father was physically present for only a total of approximately four years in the United States before the Applicant's birth in Mexico in  2021, including the requisite two years after his father's 14th birthday. Consequently, the record as a whole does not establish his father's physical presence in the United States for the overall five-year period required for transmission of U.S. citizenship under section 301(g) of the Act. Therefore, the Applicant has not demonstrated that he acquired U.S. citizenship at birth from his father. Accordingly, he is not eligible for a Certificate of Citizenship and his Form N-600 remains denied.

**ORDER:** The appeal is dismissed.