



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

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

In Re: 28452931

Date: OCT. 5, 2023

Appeal of New York, New York Field Office Decision

Form N-600, Application for Certificate of Citizenship

The Applicant seeks a Certificate of Citizenship to reflect that she acquired U.S. citizenship from her U.S. citizen father under section 301(g) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(g).

The Director of the New York, New York Field Office denied the application, concluding that the Applicant's response to a request for evidence (RFE) did not contain sufficient information to establish that her U.S. citizen parent had the required U.S. physical presence in the United States prior to the Applicant's birth. The matter is now before us on appeal. 8 C.F.R. § 103.3.

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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

The record reflects that the Applicant was born in Yemen in 2003, to married parents. The record contains a Certificate of Citizenship showing that the Applicant's father became a U.S. citizen in 1997, but the record does not reflect that the Applicant's mother is a U.S. citizen. Therefore, the Applicant seeks a Certificate of Citizenship solely through her U.S. citizen 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). The Applicant seeks a Certificate of Citizenship under the conditions at section 301(g) of the Act, which provides, in pertinent part, that the following shall be nationals and citizens 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 five years, at

least two of which were after attaining the age of fourteen years. . . . [including] any periods of honorable service in the Armed Forces of the United States

Moreover, the Applicant must meet the definition of a “child” in section 101(c)(1) of the Act, 8 U.S.C. § 1101(c)(1), which requires, in pertinent part, that during the relevant timeframe she must be an unmarried person under twenty-one years of age.

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*, 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. at 376.

The Director issued an RFE seeking additional evidence that, prior to the Applicant’s 2003 birth, the Applicant’s father had a total period of not less than five years U.S. physical presence, no less than two of which were after the age of 14 years. The Applicant responded to the RFE but the Director denied the Form N-600, concluding that the Applicant’s evidence did not contain sufficient information to establish that her U.S. citizen parent satisfied the U.S. physical presence conditions at section 301(g) of the Act.

On appeal, the Applicant claims that she was still preparing evidence in response to the RFE and that the deadline to submit her response was not yet reached when the Director denied the Form N-600, and she submits additional evidence on appeal that is material and specifically addresses the deficiencies raised in the Director’s RFE. Although the Director may issue a decision after the Applicant’s initial response to the RFE in accordance with the regulation at 8 C.F.R. § 103.2(b)(11) (all requested materials must be submitted together at one time and submission of only some of the requested evidence will be considered a request for a decision on the record), in this case the Director did not consider all of the evidence in the record. Specifically, the record contains a copy of a valid U.S. passport that appears to have been issued to the Applicant in January 2022. Consequently, we are returning the matter to the Director for consideration of the evidence submitted below and on appeal in the first instance, including the Applicant’s current U.S. passport, in evaluating whether or not the Applicant met all of the section 301(g) of the Act conditions.

ORDER: The decision of the Director is withdrawn. The matter is remanded for further proceedings consistent with the foregoing analysis.