U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

DATE: AUG 2 3 2013 OFFICE: BALTIMORE, MD [redacted]

IN RE: [redacted]

APPLICATION: Application for Certificate of Citizenship under Section 201 of the Nationality Act of 1940, 8 U.S.C. § 601

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Form N-600, Application for Certificate of Citizenship (Form N-600) was denied by the District Director, Baltimore, Maryland (the director), and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant was born in the Philippines on October 21, 1946, to unmarried parents. The applicant's father was born in the United States on July 9, 1922, and he is a U.S. citizen. The applicant's mother is not a U.S. citizen. The applicant seeks a certificate of citizenship pursuant to section 201 of the Nationality Act of 1940 ("the 1940 Act"), 8 U.S.C. § 601, based on the claim that she acquired U.S. citizenship at birth through her father.

The director denied the application, finding that the applicant had failed to establish that: she had been legitimated before the age of 21 while in the legal custody of her father, her United States citizen father met U.S. residence requirements, and that she met physical presence retention requirements for U.S. citizenship. The application was denied accordingly.

Citing to the Board of Immigration Appeals (Board) case, *Matter of Chambers,* 17 I. & N. Dec. 117 (BIA 1979), the applicant asserts, through counsel, that her father legitimated her under Maryland State law by openly and notoriously acknowledging her as his child, and by acknowledging her as his child in writing. Counsel asserts that immigration law does not require a father to have actual custody over a child in order to establish legal custody for immigration purposes. In addition, counsel asserts that U.S. physical presence retention requirements do not apply to the applicant because her father was in the U.S. military at the time of her birth, and also because she could overcome her failure to satisfy the requirements by taking an oath of allegiance pursuant to section 324(d) of the Act, 8 U.S.C. § 1435(d). In support of these assertions, counsel submits U.S. Department of State Foreign Affairs Manual (FAM) information on retention of citizenship requirements. The record also contains evidence of the applicant's father's military service, letters written by the applicant's father, and a letter from the applicant's paternal aunt.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ,* 381 F.3d 143, 145 (3d. Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

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. INS,* 247 F.3d 1026, 1028 n.3 (9th Cir. 2001). Section 201(g) of the 1940 Act, in effect at the time of the applicant's birth in 1946, states in pertinent part that 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 one of whom is a citizen of the United States who, prior to the birth of such person, has had ten years' residence in the United States or one of its outlying possessions, at least five of which were after attaining the age of sixteen years, the other being an alien: *Provided*, That in order to retain such citizenship, the child must reside in the United States or its outlying possessions for a period or periods totaling five years between the ages of thirteen and twenty-one years: *Provided further*, That, if the

> child has not taken up a residence in the United States or its outlying possessions by the time he reached the age of sixteen, or if he resides abroad for such a time that it becomes impossible for him to complete the five years' residence in the United States or its outlying possessions before reaching the age of twenty-one years, his American citizenship shall thereupon cease.

The Act of July 31, 1946, Pub. L. 79-571, 60 Stat. 721, amended section 201(g) of the 1940 Act by adding section 201(i) of the 1940 Act, which states that:

> A person born outside the United States and its outlying possession of parents one of whom is a citizen of the United States who has served or shall serve honorably in the armed forces of the United States after December 7, 1941, and before the date of termination of hostilities in the present war as proclaimed by the President or determined by a joint resolution by the Congress and who, prior to the birth of such person, has had ten years' residence in the United States or one of its outlying possessions, at least five of which were after attaining the age of twelve years, the other being an alien: *Provided,* That in order to retain such citizenship, the child must reside in the United States or its outlying possessions for a period or periods totaling five years between the ages of thirteen and twenty-one years: *Provided further,* That, if the child has not taken up a residence in the United States or its outlying possessions by the time he reaches the age of sixteen, or if he resides abroad for such a time that it becomes impossible for him to complete the five years' residence in the United States or its outlying possessions before reaching the age of twenty-one years, his American citizenship shall thereupon cease.

In the present matter, the record contains military records reflecting that the applicant's father joined the U.S. Army on November 23, 1943, and that he was honorably discharged on April 18, 1946. Section 201(i) of the 1940 Act provisions therefore apply to the applicant's acquisition of citizenship claim.

Additionally, because the applicant was born out of wedlock, she must satisfy the provisions set forth in section 205 of the 1940 Act, which provides, in relevant part, that pertinent section 201 of the 1940 Act provisions:

> [a]pply, as of the date of birth, to a child born out-of-wedlock, provided the paternity is established during minority, by legitimation, or adjudication of a competent court.

Section 101(g) of the 1940 Act defines the term "minor" as a person under 21 years of age. The applicant must therefore first demonstrate that her father established his paternity by legitimation or adjudication of a competent court prior to the applicant's 21st birthday on October 21, 1967.[1]

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[1] The director erroneously cited to the citizenship provisions governing children born out of wedlock in section 309 of the Immigration and Nationality Act, 8 U.S.C. § 1409. The error is harmless in that, both provisions indicate that the applicant must establish paternity before turning 21; the applicant does not contend that paternity was established by

The law in the Philippines, where the applicant resided prior to her 21st birthday, requires the parents of a child born out of wedlock to marry in order for the child to be legitimated. *Matter of Espiritu,* 16 I. & N. Dec. 426 (BIA 1977). In the present matter it is uncontested that the applicant's parents did not marry. The applicant was therefore not legitimated under Philippine law. Counsel asserts, however, that pursuant to the Board decision *Matter of Chambers,* 17 I. & N. Dec. 117 (BIA 1979), the applicant was legitimated by her father under the laws of Maryland, his state of residence.

Referring to Section 1-208 of the 1974, Maryland Estates and Trusts Code, the Board stated in *Matter of Chambers*, that legitimation occurs:

> [n]ot only by a judicial determination of legitimation in paternity proceedings or by marriage of the illegitimate child's parents, but also by the father's acknowledgment of the child in writing or his open and notorious recognition of the child as his own.

Id. at 120.[2] The Board found, on this basis, that a father's affidavit acknowledging that he was the beneficiary's father, and an affidavit from a friend stating that the father openly recognized the beneficiary as his child and provided a home and support to the beneficiary, established legitimation for Maryland State law purposes. *Id.* at 120-21.

To establish that the present applicant was legitimated prior to her 21st birthday under Maryland State law, the record contains letters that the applicant's father sent to the applicant's mother in November 1949 and January 1950. In the letters, the applicant's father refers to the applicant as his child, and he discusses his intent to provide financial support to the applicant and her mother. The record also contains a January 7, 2010 letter from the applicant's paternal aunt stating that the applicant's father has referred to the applicant as his daughter since she was born.[3]

Upon review, the AAO finds that the evidence in the record establishes that the applicant's father acknowledged the applicant as his child in writing, and that he thereby legitimated the applicant under Maryland State law, as set forth in section 1-208 of the 1974, Maryland Estates and Trusts Code, and in the Board decision, *Matter of Chambers, supra.*

Under section 201(i) of the 1940 Act, the applicant must also establish that her father resided in the United States for 10 years prior to the applicant's birth on October 21, 1946, at least five years of which occurred after July 9, 1934, when the applicant's father turned 12 years old. Section 104 of

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adjudication of a competent court, the alternative method of establishing paternity contained in section 205 of the 1940 Act; and the issue of paternity by legitimation was briefed by counsel.

[2] Section 1-208 of the 1974 Maryland Estates and Trusts Code was enacted after the applicant turned 21; however, the Board notes that the previous legitimation statue in the state of Maryland also allowed for legitimation by acknowledgment of the father without subsequent marriage of the parents. *Matter of Chambers* at 120 (discussing Maryland Annotated Code Article 46 (1957).

[3] The letters reflect that the applicant's father and his family commonly referred to the applicant by the name "Ruth."

the 1940 Act provides that, "the place of general abode shall be deemed the place of residence." The evidence relating to the applicant's father's residence in the United States during the requisite time period consists of a birth certificate reflecting that the applicant's father was born in South Carolina on July 9, 1922, and military records reflecting that the applicant's father served in the U.S. military from November 1943 to April 1946.

Because the applicant was born abroad, she is presumed to be an alien 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). *See also,* 8 C.F.R. § 341.2(c) (the burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence.) 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 each case. *Matter of Chawathe,* 25 I&N Dec. 369, 376 (AAO 2010) (citing *Matter of E-M-,* 20 I&N Dec. 77, 79-80 (Comm. 1989)). Even where some doubt remains, an applicant will meet this standard if she or he submits relevant, probative and credible evidence that the claim is "more likely than not" or "probably" true. *Id.* (citing *INS v. Cardoza-Fonseca,* 480 U.S. 421, 431 (1987)).

Upon review, the AAO finds that the applicant has failed to establish by a preponderance of the evidence that her father resided in the United States for 10 years prior to the applicant's birth, at least five years of which occurred after her father turned 12. At best, the evidence contained at the record establishes U.S. residence for 2 ½ years between 1943 and 1946, and for one year in 1922. The record lacks any other documentary evidence demonstrating that the applicant's father resided in the United States prior to the applicant's birth. Moreover, although counsel states on appeal that the applicant's father lived in the United States from the time of his birth until he left the country for military service, the unsupported assertions of counsel do not constitute evidence, and without supporting evidence, the assertions of counsel will not satisfy the applicant's burden of proof. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The applicant has therefore failed to establish that she acquired U.S. citizenship at birth through her father, under section 201(i) of the Act.

It is noted that the record also fails to establish that the applicant satisfied the retention requirements set forth in section 201(i) of the 1940 Act (requiring that the applicant reside in the United States or its outlying possessions for five years between the age of 13 and 21). Although subsequent laws ultimately eliminated physical presence retention requirements for U.S. citizenship, the changes were prospective in nature, and did not reinstate as citizens those who had lost citizenship by the operation of section 301(b) as previously in effect." *See* Act of October 10, 1978, Pub.L. 95-432, 92 Stat. 1046 (effective October 10, 1978). *See also,* 7 FAM 1133.2-2(d). Section 301(b) of the former Act, 8 U.S.C. § 1401(b) provided that a child who acquired citizenship at birth abroad through one citizen parent must be continuously physically present in the United States for a period of five years between the ages of 14 and 28 in order to retain his or her U.S. citizenship. In the present matter, the record reflects that the applicant first entered the United States on September 12, 2008, when she was 61 years old. She therefore failed to meet section 301(b) of the former Act, U.S. citizenship retention requirements.

The applicant claims on appeal that under section 324(d)(1) of the Act, she may regain U.S. citizenship lost upon her failure to comply with former Act retention requirements.

Section 324(d)(1) of the Act provides that:

> A person who was a citizen of the United States at birth and lost such citizenship for failure to meet the physical presence retention requirements under section 301(b) (as in effect before October 10, 1978), shall, from and after taking the oath of allegiance required by section 337 be a citizen of the United States and have status of citizen of the United States by birth, without filing an application for naturalization, and notwithstanding any of the other provisions of this title except the provisions of section 313. Nothing in this subsection or any other provision of law shall be construed as conferring United States citizenship retroactively upon such person during any period in which such person was not a citizen.

Here, however, the record does not establish that the applicant's father transmitted U.S. citizenship to the applicant at birth. Because the applicant failed to establish that she acquired citizenship at birth through her father pursuant to section 201(i) of the 1940 Act, the claim that she may regain U.S. citizenship lost upon failure to comply with retention requirements is not relevant.

The regulation at 8 C.F.R. § 341.2(c) states that the burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. Here, the applicant has failed to meet her burden of proof. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.