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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

U.S. Citizenship and Immigration Services

DATE: MAY 23 2013 OFFICE: SAN ANTONIO, TX

IN RE:

APPLICATION: Application for Certificate of Citizenship under former Section 301 of the Immigration and Nationality Act; 8 U.S.C. § 1401

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630, or a request for a fee waiver. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The applicant was born to married parents in Mexico on August 24, 1959. The applicant's mother was born in Texas on June 18, 1932, and she is a U.S. citizen. The applicant's father was born in Mexico, and he became a naturalized U.S. citizen on January 21, 2005, when the applicant was 45 years old. The applicant seeks a certificate of citizenship under former section 301(a)(7) of the Immigration and Nationality Act (the former Act), 8 U.S.C. § 1401(a)(7), based on the claim that he acquired U.S. citizenship at birth through his mother.

In a decision dated May 30, 2012, the director determined that the applicant failed to establish that his mother was physically present in the United States for 10 years prior to the applicant's birth, at least five years of which were after the applicant's mother turned 14 years old. The application was denied accordingly.[1]

The applicant asserts on appeal that the evidence in the record is reliable and establishes that his mother is a U.S. citizen, and that she was physically present in the United States for 10 years prior to his birth, at least five of which were after she turned 14. The applicant indicates on the Form I-290B notice of appeal that he will submit a brief and/or evidence to the AAO within 30 days of filing the appeal; however, no brief or evidence was received. Previously submitted documentation includes birth certificate and baptism evidence for the applicant's mother, a sworn statement from the applicant's mother, and affidavit evidence.[2]

The entire record was reviewed and considered in rendering a decision on the appeal.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ,* 381 F.3d 143, 145 (3d. Cir. 2004). 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. *Chau v. INS,* 247 F.3d

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[1] The record also contains a Form N-600 filed by the applicant on August 24, 1994. The applicant obtained a certificate of citizenship on the basis of this application on August 27, 1994. The certificate was cancelled on October 27, 1999, however, on the basis that the record contained insufficient evidence to establish that the applicant's mother met U.S. physical presence requirements set forth in the Act.

[2] The Form I-290B indicates that attorney assisted in filing the applicant's appeal. However, a Form G-28 notice of appearance, signed by the applicant and the attorney was not submitted with the Form I-290B. The AAO sent a fax to attorney on May 1, 2013, informing her that the appeal was improperly filed and allowing her 15 days to submit a new and properly executed Form G-28; however, no response was received. The applicant is therefore considered "self-represented."

1026, 1028 n.3 (9th Cir. 2001). The applicant was born in 1959. Section 301(a)(7) of the former Act therefore applies to his citizenship claim.[3]

Under section 301(a)(7) of the former Act the following shall be citizens of the United States at birth:

> [A] person born outside the geographical limits of the United States . . . 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 . . . for a period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years.

Because the applicant was born abroad, he is presumed to be an alien 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). *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)).

To establish that the applicant's mother was physically present in the United States for 10 years prior to the applicant's birth on August 24, 1959, at least five years of which were after she turned 14 on June 18, 1946, the record contains birth certificate and baptism evidence reflecting that the applicant's mother was born in Texas on June 18, 1932, that she was baptized at the [redacted] in Crystal City, Texas on October 31, 1932, and that she received confirmation at the church on April 8, 1934.

The applicant's mother states in a sworn statement dated August 26, 2010, that she lived in the United States until she was eight years old. She then moved with her family to Mexico. When she was 10 years old, she sometimes went to Crystal City, Texas for 15 days or a month at a time. After the age of 14 or 15 she visited her maternal grandparents in Texas, but she does not remember how often. She also went shopping in the United States and sometimes helped her sister in the United States for a few days or a week. About eight years after her marriage, she began doing seasonal agricultural work in the United States. The AAO notes that the applicant's mother was married in Mexico on August 31, 1951.

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[3] Section 301(a)(7) of the former Act was re-designated as section 301(g) by the Act of October 10, 1978, Pub. L. No. 95-432, 92 Stat. 1046 (1978). The requirements of former section 301(a)(7) remained the same after the re-designation and until 1986.

The applicant's mother's uncle states in an affidavit dated October 27, 1997 that the applicant's mother lived in Crystal City, Texas from 1932 to 1941. The applicant's maternal aunt states in an affidavit dated October 27, 1997, that she has known the applicant's mother since 1940, and that the applicant's mother was away from home most of the time working in the fields.

A November 8, 1997 affidavit from friend, states that she lived with the applicant's mother in Texas from 1951 to 1957. Friend, sates in an October 21, 1997 affidavit that she lived with the applicant's mother in Texas from 1959 to 1963, and that the applicant's mother worked in the fields doing agricultural work.

The applicant's mother's friend, states in an August 3, 2009 affidavit that she moved to Crystal City in 1947, that she met the applicant's mother there, and that one of her brothers married one of the applicant's mother's daughters. Friend, states in an August 3, 2009 affidavit that between 1948 and 1950, the applicant's mother visited Texas with her grandparents, worked on farms in Texas, and also stayed Texas with her parents for one to two week periods. Friend, states in an August 3, 2009 affidavit that she knew the applicant's mother between 1950 and 1954, when she lived "for periods of time" in Crystal City, Texas with her parents.

states in an affidavit dated April 7, 2005 that he employed the applicant's mother as a farm labor worker in Texas from 1958 to 1960.

The record also contains two Form N-600s filed by the applicant in June 1994 and in August 2009. The applicant states in the June 1994 Form N-600, that his mother was in the United States from 1932 to 1941, in 1957, from 1972 to 1978, and from 1988 to 1994. He states in the August 2009 Form N-600 that his mother was in the United States from June 1932 to June 1940, for four months per year between 1940 to 1946, and for eight months per year from 1947 to 1970.

The AAO finds that the documentary evidence contained in the record fails to establish that the applicant's mother was physically present in the United States for the requisite time period set forth in section 301(a)(7) of the former Act. At best, the applicant's mother's birth and baptism certificates establish that the applicant's mother was physically present in the United States from 1932 until 1934.

In ascertaining the evidentiary weight of affidavits, the Service must determine the basis for the affiant's knowledge of the information to which he is attesting; and whether the statement is plausible, credible, and consistent both internally and with the other evidence of record. *Matter of E-M-*, 20 I&N Dec. 77 (Comm. 1989). The affidavits in the present matter have diminished evidentiary weight.

The applicant's mother's sworn statement is vague and lacks material detail with regard to the exact dates of her physical presence in the United States prior to the applicant's birth. The affidavits from the applicant's mother's family, friends and employer also lack material detail with regard to the exact dates of the applicant's mother's physical presence in the United States. In addition, the record lacks evidence establishing the identity of the affiants, demonstrating that the affiants lived in Texas

during the claimed time periods, or demonstrating that the applicant was employed in Texas at any time. Moreover, claims by friends stating that the applicant's mother lived in Texas between 1950 and 1957 are materially inconsistent with the applicant's mother's sworn statement claim that she moved to Mexico at the age of eight, and only returned to the United States to visit and sometimes work in the fields. It is noted that the physical presence dates claimed by the applicant in his 1994 and subsequent 2009 Form N-600s are also materially inconsistent with one another.

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 establish by a preponderance of the evidence that his mother was physically present in the United States for 10 years prior to his birth on August 24, 1959, at least 5 years of which were after she turned 14 on June 18, 1946, as required under section 301(a)(7) of the former Act. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.