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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Avenue, NW, MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

DATE: MAY 27 2014 OFFICE: HOUSTON, TX FILE:

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:

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

Pertinent Facts and Procedural History

The applicant was born in Mexico on October 30, 1961. He was admitted into the United States as a Lawful Permanent Resident on November 5, 1979, when he was 18 years old. The applicant's father was born in Mexico on April 20, 1928, and he became a naturalized U.S. citizen on May 11, 1998, when the applicant was 36 years old. The applicant's mother, now deceased, was born in Mexico and was not a U.S. citizen. The applicant seeks a certificate of citizenship pursuant to former section 301(a)(7) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(a)(7), based on the claim that he acquired U.S. citizenship at birth through his father.

In a decision dated August 26, 2013, the director determined that the applicant failed to establish that his father was a U.S. citizen at the time of the applicant's birth; or that his father was physically present in the United States for 10 years prior to the applicant's birth, five years of which were after his father turned 14 years old, as required under former section 301(a)(7) of the Act. The director determined further that the applicant did not qualify for citizenship under former section 321 of the Act, 8 U.S.C. § 1432, because he was over the age of 18 when his father became a naturalized U.S. citizen; and he did not qualify for citizenship under section 320 of the Act, as amended, 8 U.S.C. § 1431, because he was over the age of 18 when the applicable provisions in the Child Citizenship Act (CCA) became effective on February 27, 2001. The Form N-600 was denied accordingly.

Through counsel, the applicant asserts on appeal that his paternal grandmother was born in the United States on April 18, 1894, and that his father acquired U.S. citizenship at birth through her. The applicant asserts further that his father meets the U.S. physical presence requirements set forth in former section 301(a)(7) of the Act, and that the applicant therefore meets the requirements for U.S. citizenship under former section 301 of the Act. The applicant does not contest that he is ineligible for citizenship under former section 321 of the Act, and under section 320 of the Act, as amended.

Applicable Law

The AAO reviews these proceedings *de novo*. *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. *See Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1028 n.3 (9th Cir. 2001) (internal citation

omitted). The applicant in the present matter was born in 1961. Former section 301(a)(7) of the Act therefore applies to his acquisition of U.S. citizenship claim.[1]

Under former section 301(a)(7) of the 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's father was born in Mexico on April 20, 1928, the Act of 1855, which was incorporated into the Revised Statutes (R.S.) as section 1993, is applicable to the applicant's father's U.S. citizenship determination. Evidence to establish acquisition of U.S. citizenship under section 1993 R.S., as amended, would consist of:

(1) A birth certificate or other evidence of the child's birth to a U.S. citizen mother, father, or both;
(2) If applicable, the parents' marriage certificate or other evidence of the child's legitimacy or legitimation;
(3) Proof of at least one parent's U.S. citizenship; and
(4) Evidence of that parent's residence in the United States at any time before the child's birth.

Persons born to one citizen and one alien parent must also prove that they met or have been exempted from applicable retention requirements. *See* Volume 7 of the Foreign Affairs Manual (FAM) at 1135.9.

Analysis

The applicant asserts that his father acquired U.S. citizenship at birth through the applicant's paternal grandmother, The record contains a copy of 's delay-issued birth certificate, and a baptismal certificate reflecting 's birth in Texas on April 18, 1894. The record also contains affidavits from the applicant's father and other family members stating, in pertinent part, that was born in Texas, and that she is the applicant's father's mother. The record does not, however, contain the applicant's father's birth certificate, or any other documentary evidence to establish that he is the child of The record also does not contain a copy of the applicant's paternal grandparents' marriage certificate to corroborate the claim that the applicant's father was born in wedlock. Accordingly,

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[1] Former section 301(a)(7) of the 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 has not established that his father acquired U.S. citizenship at birth under section 1993 R.S., as amended.

Even if the applicant had established that his father acquired U.S. citizenship at birth, the applicant's citizenship claim under former section 301(a)(7) would fail because the applicant did not establish, by a preponderance of the evidence, that his father was physically present in the United States for 10 years prior to the applicant's birth on October 30, 1961, at least five years of which were after his father turned 14, on April 20, 1942.

A September 11, 2013 affidavit signed by employer, reflects, in pertinent part, that he has known the applicant's father "sense [sic] he was young," the applicant's father worked for him at every season since 1948; he paid the workers in cash every week; and that each worker's name was in a book. A letter dated, February 26, 1963, addressed to the American Consul in Monterrey, Mexico, from the Rio Grande City, Texas reflects that Mr. requested that a work permit be given to ' of Rancherias, Tamaulipas, Mexico." An Affidavit of Employment from , offers the applicant's father permanent employment if he is given his "visa to make his permanent home in the United States." The affidavit is dated, the 20th day of February; however the year is incomplete and states only "19."

The applicant's father's cousin, born on April 12, 1938, indicates, in pertinent part, in an affidavit dated September 10, 2013, that he remembers spending time with the applicant's father in the Rio Grande City area when he was young; his brother and the applicant's father went to dances together; when he was about four years old, the applicant's father worked in the fields and would stay or eat with his family after coming home from the fields; and that the applicant's father enjoyed being around his family's ranch between 1941 to 1961.

The applicant's father's friend, born on October 19, 1929, indicates, in pertinent part in an affidavit dated August 23, 2013, that she has known the applicant's father since about 1947, when she was employed at in Rio Grande City, Texas; he was a neighbor and family friend, and she often saw him around; he lived with his mother and other family members at in Rio Grande City, Texas; and that he worked in farm labor and did other odd jobs.

Friend, born on February 19, 1932, indicates, in pertinent part, in an affidavit dated September 13, 2013, that she met the applicant's father in 1949, while working as a receptionist at a hospital where he received medical treatment for asthma; the applicant's father worked in the fields at and lived with his mother and aunt at Rio Grande City, Texas; and between 1950 and approximately 1961, the applicant's father stayed in their home and assisted her father selling and delivering newspapers.

The applicant's father's sister-in-law, born on July 4, 1928, indicates in an affidavit dated September 11, 2013, that she lived in Rio Grande City, Texas all of her life; she has known the applicant's father and his family since 1941, and she married the applicant's

father's brother on January 18, 1951; the applicant's father lived at Rio Grande City, Texas; and the applicant's father worked as a farm worker from 1948 to 1961.

Affidavits from the applicant's sisters, born on September 6, 1959, and born on August 28, 1963, indicate, in pertinent part, that they remember hearing from family members that their U.S. citizen grandmother raised their father in the United States, and that their father worked and lived in Rio Grande City, Texas throughout his life.

The applicant's father states in a letter dated September 11, 2013, that his mother brought him to live in Texas soon after his birth; that he lived continuously in Texas after that; that he worked for Mr. at in Texas from 1948-1955, and as a bracero in Texas from 1956 to 1957; and that after he married his wife in 1957, he visited his family in Mexico periodically when he was not working. He states in pertinent part, in a letter dated May 10, 2013 however, that he entered the United States through Roma, Texas and became a U.S. permanent resident on April 1, 1963; and that "since that date," he lived in the United States permanently and continuously. The applicant's father repeats May 10, 2013 information in a subsequent letter dated May 13, 2013, and adds that prior to becoming a U.S. permanent resident, he came to the United States regularly with his mother to visit family, and that they stayed at their aunt's house in Texas for several weeks at a time.[2]

The record also contains a copy of the applicant's father's immigrant visa application, signed by the applicant's father under penalty of perjury on March 18, 1963, in which his father states that he resided in Rancherias, Tamaulipas, Mexico (question #8); since the age of 16, from 1944-1963, his residence was in Rancherias, Tamaulipas, Mexico (question #30); and he never resided in the United States (question #33). The applicant's father responds to the inconsistencies in his statements in a second September 11, 2013 letter, by stating, in pertinent part, that he lived in the United States illegally from 1928 to 1961; that there was confusion regarding his answers to questions 30 and 33 on his U.S. immigrant visa application; and that his answers to those questions on his U.S. immigrant visa application were wrong.

In ascertaining the evidentiary weight of affidavits, the Service must determine the basis for the affiant's knowledge of the information to which she or 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'r. 1989). Depending on the specificity, detail, and credibility of an affidavit, letter or statement, U.S. Citizenship and Immigration Services (USCIS) may give the document more or less persuasive weight in a proceeding. The Board of Immigration Appeals (the Board) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board also held, however: "We not only encourage, but require the introduction of corroborative testimonial and

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[2] An Alien Laborer's Permit issued to the applicant's father is largely illegible, and Social Security earnings information submitted by the applicant lacks probative value in that it contains no identifying name or Social Security number. Other submitted evidence is dated after the applicant's birth. Photograph evidence does not establish when or where the photographs were taken, or who is in the photographs.

documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the affected party to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

In the present case, the affidavits contained in the record are uncorroborated by documentary evidence of the affiants' or the applicant's father's presence or employment in the United States prior to the applicant's birth in 1961. The affidavit of the applicant's father's former employer, does not provide probative details of the applicant's father's employment or his residence in the United States, only that the applicant's father "used to work for [him] every season, sense [sic] 1948." The applicant's sister, was only two years old when the applicant was born and she, therefore, has no personal knowledge of their father's residence from the time that their father was 14 years old until the applicant's birth in 1961. The applicant's father's cousin was only four year old when the applicant's father turned 14, and he has no first-hand knowledge of the applicant's father's employment, and provides no probative details regarding the applicant's father's residence during the 1942 to 1961 years. Similarly, the affidavits of and all discuss the applicant's father's employment and physical presence in Rio Grande, Texas but they do not provide any probative details regarding the length of time he was in the United States. Overall, the affidavits have diminished evidentiary weight as they are materially inconsistent with immigrant visa application information provided by the applicant's father under oath on March 18, 1963. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Here, the applicant has failed to resolve the material inconsistencies contained in the record with competent objective evidence.

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. The applicant has failed to establish by a preponderance of the evidence that his father was a U.S. citizen at the time of the applicant's birth, or that his father was physically present in the United States for 10 years prior to the applicant's birth, at least five years of which were after his father turned 14. The applicant therefore failed to satisfy the requirements for acquisition of citizenship under former section 301(a)(7) of the Act.

We note further that section 320 of the Act does not apply to the applicant's case, as the provisions apply only to persons who were not yet 18 years old as of February 27, 2001.[3] *See Matter of*

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[3] Section 320 of the Act provides, in pertinent part, that:

> (a) A child born outside of the United States automatically becomes a citizen of the United States when all of the following conditions have been fulfilled:
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> 1) At least one parent of the child is a citizen of the United States, whether by birth or naturalization.

Rodriguez-Tejedor, 23 I&N Dec. 153 (BIA 2001). Former section 321 of the Act also does not apply to the applicant's case, since the applicant's father did not naturalize prior to the applicant's 18th birthday.[4]

Conclusion

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed. The application remains denied.

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2) The child is under the age of eighteen years.
3) The child is residing in the United States in the legal and physical custody of the citizen parent pursuant to a lawful admission for permanent residence.

[4] Former section 321 of the Act provided, in pertinent part, that:

> (a) A child born outside of the United States of alien parents, or of an alien parent and a citizen parent who has subsequently lost citizenship of the United States, becomes a citizen of the United States upon fulfillment of the following conditions:
>
> > (1) The naturalization of both parents; or
> > (2) The naturalization of the surviving parent if one of the parents is deceased; or
> > (3) The naturalization of the parent having legal custody of the child when there has been a legal separation of the parents or the naturalization of the mother if the child was born out of wedlock and the paternity of the child has not been established by legitimation; and if-
> > (4) Such naturalization takes place while said child is under the age of 18 years; and
> > (5) Such child is residing in the United States pursuant to a lawful admission for permanent residence at the time of the naturalization of the parent last naturalized under clause (2) or (3) of this subsection, or thereafter begins to reside permanently in the United States while under the age of 18 years.