U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
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: SEP 0 8 2014 Office: NEW YORK, NY FILE: [redacted]

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship under 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 (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 New York, New York District 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 to married parents in the Dominican Republic on September 24, 1991. His mother was born in the United States on April 26, 1973, and she is a U.S. citizen. His father is not a U.S. citizen. The applicant seeks a certificate of citizenship pursuant to section 301(g) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(g), based on the claim that he acquired U.S. citizenship at birth through his mother.

In a decision dated April 3, 2013, the director determined that the applicant failed to establish that his mother was physically present in the United States for five years prior to the applicant's birth, two years of which were after the applicant's mother turned 14 years old. The applicant therefore failed to satisfy section 301(g) of the Act acquisition of citizenship requirements. The director determined that the applicant also did not qualify for derivative U.S. citizenship under section 320 of the Act, 8 U.S.C. § 1431, because he was not admitted into the United States as a lawful permanent resident prior to his 18th birthday. The application was denied accordingly.

On appeal, the applicant indicates that although his mother's U.S. school records are no longer available due to passage of time and "problems like asbesto [sic]," the cumulative evidence in the record establishes that his mother met physical presence requirements set forth in section 301(g) of the Act, prior to his birth. The applicant does not address the finding that he fails to qualify for citizenship under section 320 of the Act.

We conduct 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.

Applicable Law

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). Here, the applicant was born in 1991. Accordingly, section 301(g) of the Act controls his claim to U.S. citizenship.[1]

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[1] Section 301(g) of the Act applies to individuals born on or after November 14, 1986, the date of enactment of the Immigration and Nationality Act Amendments of 1986, Pub. L. No. 99-653, 100 Stat. 3655 (1986). (1986 Act). *See* Section 8(r) of the Immigration Technical Corrections Act of 1988, Pub. L. No. 100-525, 102 Stat. 2609 (1988).

Section 301(g) of the Act provides in pertinent part that the following shall be citizens of the United States 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.

Section 320 of the Act, as amended by the Child Citizenship Act of 2000 (the CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), took effect on February 27, 2001, and applies to persons who were not yet 18 years old as of February 27, 2001. *See Matter of Rodriguez-Tejedor,* 23 I&N Dec. 153 (BIA 2001). The applicant was under the age of 18 on February 27, 2001. Section 320 of the Act therefore also applies to his citizenship claim.

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:
>
> (1) At least one parent of the child is a citizen of the United States, whether by birth or naturalization.
>
> (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.

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 an 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'r. 1989)).

Analysis

Section 320 of the Act

The applicant does not contest the director's finding that he fails to qualify for citizenship under section 320 of the Act; moreover, the record reflects that the applicant has not obtained lawful permanent resident status in the United States. He therefore does not satisfy the requirements set forth in section 320(a)(3) of the Act. Accordingly, he does not qualify for derivative U.S. citizenship under section 320 of the Act

Section 301 of the Act

To establish that his mother was physically present in the United States for five years prior to the applicant's birth on September 24, 1991, at least two years of which were after his mother turned 14 on April 26, 1987, the record contains the applicant's mother's New York birth certificate; affidavits; and employment, federal income tax, and Social Security benefits information for the applicant's maternal grandmother.

The applicant's maternal grandmother states in an affidavit dated March 30, 2013, that the applicant's mother was born in the United States on April 26, 1973; lived in her home at New York from birth until she was in her early 20s; and attended school in New York between kindergarten and 10th grade. Family friend, repeats the above information in an affidavit dated March 30, 2013, and adds that the applicant's mother's siblings attended her daycare, and she has known the applicant's mother all of her life. Friends also state that that the applicant's mother was born in the United States on April 26, 1973, she lived in her home at in New York from birth until she was in her early 20s, and she attended school in New York from kindergarten through 10th grade. , born June 28, 1982, repeats the above information and states that the applicant's mother picked her up from school every day from 1990 to 1995. The record also contains evidence that the applicant's maternal grandmother worked in New York between 1989 and 1990, and copies of the applicant's maternal grandmother's 1986 and 1990 federal income tax forms claiming the applicant's mother as her dependent, and indicating that the applicant's mother resided at her residence at in New York for the entire year in 1986 and 1990. A letter from the Social Security Administration, dated March 27, 1991 and sent to the applicant's maternal grandmother at her New York address, reflects that Social Security benefits were terminated for the applicant's mother effective April 1991.

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. *See Matter of E-M-*, 20 I&N Dec. 77 (Comm'r. 1989). Here, the affidavits have diminished evidentiary value, in that they are vague and lack material detail with regard to dates and places that the applicant's mother was physically present in the United States; moreover, the record

lacks evidence establishing the affiant's personal knowledge of the events claimed, or establishing that the affiants were physically present in the United States during the entire claimed time periods. In addition, the affidavits are uncorroborated by documentary evidence. The record contains no school records to corroborate assertions that the applicant's mother attended school in the United States from kindergarten until 10th grade, and the record lacks documentary evidence to corroborate assertions that school records are unavailable due to destruction or passage of time. The applicant's maternal grandmother's 1986 and 1990 income tax forms claiming the applicant's mother lived in New York as her dependent during those years, and the 1991 Social Security benefit letter fail, without more, to establish that the applicant's mother was physically present in the United States during those years.

Furthermore, the applicant's parents' marriage certificate indicates that the couple was married in the Dominican Republic on February 1, 1990 when the applicant's mother was 16 years old. However, all of the affiants claimed that the applicant's mother lived in New York until her early 20's. The applicant has not provided a timeline of his parents' meeting and marriage in light of his claims that she resided in the United States since birth. Overall, the record fails to demonstrate, by a preponderance of the evidence, that the applicant's mother was physically present in the United States for five years prior to the applicant's birth on September 24, 1991, at least two years of which were after his mother turned 14 on April 26, 1987, as required under section 301(g) of the Act. Accordingly, the appeal will be dismissed.

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