



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: **AUG 06 2013**

OFFICE: SANTA ANA, CA [Redacted]

IN RE:

[Redacted]

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:

[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
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 (the director), Santa Ana, California, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant was born in Mexico on [REDACTED] to married parents. The applicant's mother was born in Mexico on [REDACTED], and acquired U.S. citizenship at birth through a parent. The applicant's father was born in Mexico and is 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 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 August 14, 2012, the director determined that the applicant had failed to meet his burden of establishing that his mother was physically present in the United States for 10 years prior to his birth, five years of which were after the applicant's mother turned 14, as required by the former Act. The application was denied accordingly.

Through counsel, the applicant asserts on appeal that the evidence in the record establishes that his mother was physically present in the United States for the time periods specified in section 301 of the former Act. In support of the assertions, counsel submits declarations from friends and family members; non-immigrant visa and passport information for the applicant's mother; photographs, and an article on polio.

The record also contains Spanish-language documentation. The regulation at 8 C.F.R. § 103.2(b)(3) provides that:

Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

The Spanish-language documents that are not accompanied by certified English translations cannot be considered in the applicant's case. The entire remaining 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 1026, 1028 n.3 (9th Cir. 2001). The applicant was born in 1971. Section 301(a)(7) of the former Act therefore applies to his citizenship claim.¹

¹ 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.

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 his mother was physically present in the United States for 10 years prior to the applicant’s birth on May 16, 1971, at least five years of which were after his mother turned 14 on January 23, 1962, the record contains declarations from friends and family members attesting to the applicant’s mother’s physical presence in the United States. The applicant’s mother states in a declaration that “since a very early age” her father took her to [REDACTED] to visit her half-sister, [REDACTED] lived with [REDACTED] from 1951 to 1952. She continued to visit [REDACTED] “off and on” until 1958. Due to a polio outbreak in Mexico, she and [REDACTED] with her Godparents, [REDACTED], from 1954 to 1958, and in 1963. She was home-schooled from 1954 to 1958, and after 1963 she attended [REDACTED] boarding school in [REDACTED]. She subsequently lived with her Godparents in [REDACTED] from 1968 to 1969, and she often visited her half-brother, [REDACTED] during that time.

The applicant’s maternal aunt, [REDACTED], attests in an almost identical declaration, to the information contained in the applicant’s mother’s declaration.

[REDACTED] the nephew of the applicant’s mother’s Godparents, states in a declaration dated October 11, 2012, that he and his family visited [REDACTED] and that the applicant’s mother and sister lived with them “for long periods off and on since 1951 or 1952,” and “full time [from] 1954 to 1958 and then again 1962, 1963 until they went to boarding school. . . .” The applicant’s mother also lived with [REDACTED] in 1967 and 1968, and off and on in 1969.

[REDACTED] states in an October 11, 2012 declaration that she worked at [REDACTED] from 1965 to 1972, and that she remembers

the applicant's mother and sister lived with the [REDACTED] "off and on from 1951" and "all the time from 1954 to 1958."

[REDACTED] the daughter of the applicant's mother's half-sister, [REDACTED], states in a declaration dated October 7, 2012, that the applicant's mother and sisters lived with them from "1951 to 1952 and then off and on for long periods of time" until they began living with their Godparents in [REDACTED] in 1954. She states that the applicant's mother also attended school in [REDACTED] and then lived with her half-brother, [REDACTED] from 1963 until 1969.

An "Address History for [REDACTED] [REDACTED]. The document notes that [REDACTED] are now deceased, and lists related family members as persons that can confirm their residences.

The record also contains passport information reflecting that the applicant's mother received an F1 student visa valid from 9/7/65 to 9/7/66. Photographs, and a 1965 [REDACTED] school class photo of the applicant's mother are also contained in the record. The record additionally contains an article discussing polio in the United States in the 1950s.

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. 1989). In the present matter, the affidavits contained in the record have diminished evidentiary weight. The statements made with regard to dates and places that the applicant's mother lived in the United States are vague and uncorroborated by independent documentary evidence. Moreover, the record lacks documentary evidence identifying the affiants and their ages, or establishing the affiants' residence or employment in the United States at the claimed time periods. In addition I [REDACTED] statement that the applicant's mother lived with her Godparents full time in 1962, and from 1968 to 1969 is materially inconsistent with statements made by the applicant's mother and sister. [REDACTED] statement that the applicant's mother lived with her half-brother, [REDACTED] from 1963 to 1969 also conflicts materially with the other declaration statements.

Furthermore, the record lacks documentary evidence to corroborate claims made in the declarations with regard to the applicant's mother's physical presence in the United States. Although the record contains a 1965 school photograph of the applicant's mother, the record contains no school records to establish where [REDACTED] is located, where the applicant's mother lived when she attended the school, or how long she attended the school. In addition, although the record contains passport information reflecting that the applicant's mother had an approved F1 student visa valid from 9/7/65 to 9/7/66, no U.S. entry stamp is contained in the passport to indicate that she was admitted into the country as a student. The article evidence discussing polio in the United States in the 1950s also does not address or establish that the applicant's mother was physically present in the United States, and the record contains no other evidence to corroborate the applicant's mother's physical presence in the United States during the claimed time periods.

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. In the present matter, 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, at least five years of which were after his mother turned 14, as required by section 301(a)(7) of the former Act. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.