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

DATE: AUG 21 2013 OFFICE: DENVER, CO FILE:

IN RE: Applicant:

APPLICATION: Application for Certificate of Citizenship under Sections 301 and 309 of the Immigration and Nationality Act; 8 U.S.C. §§ 1401 and 1409

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 Form N-600, Application for Certificate of Citizenship (Form N-600) was denied by the Field Office Director, Denver, Colorado (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 El Salvador on August 28, 2009, to unmarried parents. His parents married on February 14, 2010. The applicant's father was born in El Salvador, and he became a naturalized U.S. citizen on April 19, 2002. The applicant's mother is not a U.S. citizen. The applicant seeks a certificate of citizenship pursuant to sections 301(g) and 309(a) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1401(g) and 1409(a), based on the claim that he acquired U.S. citizenship at birth through his father.

The director determined in a decision dated, March 14, 2013, that the applicant was not eligible for citizenship under section 320 of the Act, 8 U.S.C. § 1431, because he was not present in the United States, and did not reside in the United States in the custody of his U.S. citizen father and pursuant to a lawful admission for permanent residence.[1] The application was denied accordingly.

On appeal the applicant concedes, through counsel, that he does not meet section 320 of the Act U.S. residence and lawful permanent resident requirements for derivative citizenship. Counsel asserts, however, that the applicant's father was a U.S. citizen at the time of the applicant's birth, and that the applicant acquired U.S. citizenship at birth through his father pursuant to section 301(g) of the Act.[2]

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. *See Chau v. INS*, 247 F.3d 1026, 1028 n.3 (9th Cir. 2001). The applicant in the present matter was born in 2009. Accordingly, section 301(g) of the Act controls his claim to U.S. citizenship.

Section 301(g) of the Act provides in pertinent part that the following shall be nationals and citizens of the United States at birth:

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[1] Section 320(a) of the Act provides that:

> 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.

[2] Because it is uncontested that the applicant does not meet section 320 of the Act derivative citizenship requirements, the AAO shall not address the matter on appeal.

> 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.

Additionally, because the applicant was born out of wedlock, he must satisfy the legitimation provisions set forth in section 309(a) of the Act, which state, in pertinent part that:

> The provisions of paragraphs (c), (d), (e), and (g) of section 301 . . . shall apply as of the date of birth to a person born out of wedlock if—
>
> (1) a blood relationship between the person and the father is established by clear and convincing evidence.
>
> (2) the father had the nationality of the United States at the time of the person's birth.
>
> (3) the father (unless deceased) has agreed in writing to provide financial support for the person until the person reaches the age of 18 years and
>
> (4) while the person is under the age of 18 years—
>
> (A) the person is legitimated under the law of the person's residence or domicile.
>
> (B) the father acknowledges paternity of the person in writing under oath, or
>
> (C) the paternity of the person is established by adjudication of a competent court.

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). 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)).

In *Matter of Moraga,* 23 I&N Dec. 195, 199 (BIA 2001), the Board of Immigration Appeals determined that under the law in El Salvador, a child born out of wedlock, who is under the age of 18 on December 16, 1983, or who is born on or after that date, becomes legitimated once the child's paternity is established. In the present matter, the record contains the applicant's birth certificate reflecting that he was born in El Salvador on August 28, 2009, and reflecting that his father acknowledged paternity over him at the time of his birth in 2009. The applicant has therefore met the legitimation requirement set forth in section 309(a)(4)(A) of the Act. In addition, birth certificate evidence establishes the blood relationship between the applicant and his father, and naturalization certificate evidence establishes the applicant's father's U.S. citizenship as of April 19, 2002. The

requirements set forth in sections 309(a)(1) and (2) have therefore also been met. The record also contains evidence demonstrating that the applicant's father agreed in writing to provide financial support to the applicant, as set forth in section 309(a)(3) of the Act. The applicant therefore established that he meets all of the requirements set forth in section 309(a) of the Act.

The applicant must also establish that prior to his birth on August 28, 2009, his father was physically present in the United States for five years, at least two years of which occurred after the applicant's father turned 14, on July 4, 1982, as set forth in section 301(g) of the Act. As evidence of his father's physical presence in the United States during the required time period, the record contains federal tax information reflecting that the applicant's father paid interest on a home loan in the United States between 2000 and 2006. Internal Revenue Service account transcripts and Social Security Administration records reflect further that the applicant's father earned income in the United States between 1988 and 1994, and that his annual income ranged between $1352.00 to $7074.00 during that time period. The records reflect that the applicant's father earned $14,520.00 in 1993 and $6416.00 in 1994; between 1996 and 2000 his annual income ranged from $23,913.00 to $46,933.00; and he earned $25,555.00 in 2003; $9134.00 in 2005 and $8312.00 in 2006. No income was earned in 1995, 2001, 2002, 2004, 2007, and 2009.

The record also contains a December 3, 2011 letter signed by [redacted] stating that he has known the applicant's father since June 1995; that the applicant's father purchased a home across the street from him "a few years later;" and that in 2002, he and the applicant's father tried a "short-lived" business venture together. A December 15, 2011 letter from [redacted] states that the applicant's father was a student at his martial arts school, that he and the applicant's father are friends, and that he has known the applicant's father for 15 years.

The AAO finds that the applicant has failed to establish, by a preponderance of the evidence, that his father was physically present in the United States for the requisite time period set forth in section 301(g) of the Act. The Social Security Administration and federal income tax evidence reflects that the applicant's father earned a minimal amount of income during many of the recorded years. Moreover, the evidence does not establish where the applicant's father worked, how long he worked, or where he lived when he earned income in the United States. Furthermore, the record lacks home title, utility bill, or other documentary evidence to establish that the applicant's father was physically present in the United States during the claimed time periods, and the mortgage loan tax information fails to demonstrate that the applicant's father resided in the home in the United States, or that he was physically present in the United States when mortgage payments were made.

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 letters in the present matter have diminished evidentiary weight. They are vague and lack material detail with regard to the exact dates of the applicant's father'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 the United States during the claimed time periods, or demonstrating that the applicant lived near, worked with, or trained with, the affiants.

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 father was physically present in the United States for five years prior to his birth, at least two years of which were after his father turned 14, as required under section 301(g) of the Act. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.