

(b)(6)

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

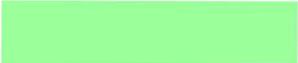


U.S. Citizenship  
and Immigration  
Services

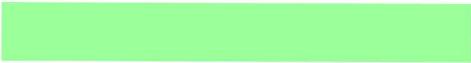


DATE: **AUG 23 2013**

OFFICE: NEW ORLEANS, LA

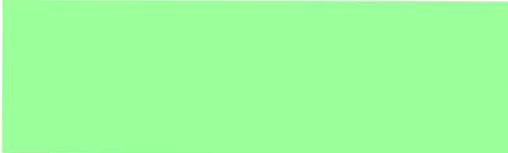


IN RE:



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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Application for Certificate of Citizenship (Form N-600) was denied by the District Director, New Orleans, Louisiana (the director), and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen. The motion is granted. The AAO's prior decision is affirmed. The underlying application will remain denied.

The applicant was born in Mexico on A [REDACTED] to married parents. The applicant's mother was born in Mexico on [REDACTED] and she acquired U.S. citizenship at birth through a U.S. citizen parent. The applicant's father is not a U.S. citizen. The applicant seeks a certificate of citizenship pursuant to section 301(a)(7) of the former 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.

The director determined that the applicant had failed to establish that his mother met U.S. physical presence requirements prior to the applicant's birth. The Form N-600 was denied accordingly. In a decision dated September 22, 2011, the AAO agreed that the applicant had failed to establish that his mother was physically present in the United States for 10 years prior to his birth on [REDACTED] five years of which were after the applicant's mother turned [REDACTED] in September 1967, as set forth in section 301(a)(7) of the former Act. The appeal was dismissed accordingly.

Through counsel, the applicant indicates on motion that a new affidavit and documentary evidence establish that the applicant's mother met the U.S. physical presence requirements set forth in section 301(a)(7) of the former Act. In support of the assertions, counsel submits a new affidavit from the applicant's mother's cousin, death certificate evidence, and a [REDACTED] program. Previously submitted documentation includes certificate of citizenship evidence for the applicant's mother and letters from the applicant's mother, her aunt, and her two cousins. The entire record was reviewed and considered in rendering a decision on the motion.

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 1973. Section 301(a)(7) of the former Act therefore applies to his derivative citizenship claim.<sup>1</sup>

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

---

<sup>1</sup> 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.

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)).

The AAO found in the previous September 22, 2011 decision that affidavits from the applicant’s mother, his mother’s aunt, [REDACTED] and his mother’s cousins, [REDACTED] had diminished evidentiary weight because they were vague and lacked material detail regarding dates and locations of the applicant’s mother’s physical presence during the required time periods. Moreover, the affidavits from [REDACTED] contained unexplained material inconsistencies regarding the dates of the applicant’s mother’s physical presence in the United States. The record contained no other evidence of the applicant’s mother’s physical presence in the United States prior to the applicant’s birth. The applicant therefore failed to establish that his mother was physically present in the United States for the requisite time period set forth in section 301(a)(7) of the former Act.

On motion, counsel submits a second affidavit from the applicant’s mother’s cousin, [REDACTED] in which she indicates that she remembers attending a State fair with the applicant’s mother in August 1972, and that the applicant’s mother attended her son’s and grandmother’s funerals in October and December 1972. To corroborate the assertions, counsel submits a copy of the 1972 [REDACTED] and October and December 1972, death certificate evidence for the affiant’s son and grandmother.

The new evidence 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. 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 AAO finds that the affidavit submitted on motion has diminished evidentiary weight. The claim by [REDACTED] that the applicant’s mother was physically present in the United States in August, October and December 1972 is materially inconsistent with previously submitted affidavits contained in the record. The claim is also vague, lacks material detail, and is uncorroborated by documentary evidence in the record. The [REDACTED] evidence is general, does not refer to the applicant’s mother or [REDACTED], and does not demonstrate that the applicant’s mother was physically present at the [REDACTED]. The death certificate evidence also fails to refer to the applicant’s mother, or to demonstrate that the applicant’s mother was physically present in the United States at the time of her cousin’s family member’s deaths.

Furthermore, the record lacks corroborative documentary evidence demonstrating that [REDACTED] was in the United States during the claimed time periods, or at any other time.

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 mother was physically present in the United States for 10 years prior to his birth on April 1, 1973, at least five years of which were after she turned 17 on September 5, 1967, as required under section 301(a)(7) of the former Act. The underlying application therefore remains denied.

**ORDER:** The motion to reopen is granted. The AAO's prior decision, dated September 22, 2011, is affirmed. The underlying application remains denied.