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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: **DEC 09 2013**

OFFICE: DALLAS, TX

FILE: [REDACTED]

IN RE: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under Section 301 of the former 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,

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

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, Dallas, Texas (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 Mexico to married parents on July 5, 1965. The record reflects that the applicant's mother, now deceased, was born in the United States on September 7, 1928, and that she was a U.S. citizen.¹ The applicant's father, also deceased, was not a U.S. citizen. The applicant seeks a certificate of citizenship under 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 6, 2013, the director determined that the applicant had failed to establish that his mother was physically present in the United States for 10 years prior to the applicant's birth, five years of which were after she turned 14, as required by section 301(a)(7) of the former Act. The application was denied accordingly.

The applicant asserts on appeal that the evidence in the record is detailed and establishes that his mother met section 301(a)(7) of the former Act U.S. physical presence requirements. The applicant asserts further that the director failed to properly review and analyze the evidence in his case, and that the director failed to interview all proposed witnesses in his case, as required under 8 C.F.R. § 341.2. In support of his assertions, the applicant submits birth and baptismal certificates for his mother, U.S. Census and death certificate evidence for his maternal grandmother, and affidavits from family and friends attesting to his mother's physical presence in the United States.

The AAO conducts 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.

The regulation at 8 C.F.R. §341.2 provides in pertinent part:

- (a) Personal appearance of applicant and parent or guardian --

¹ The applicant's mother's nationality is listed as "Mexican" on her marriage certificate, registered in Tamaulipas, Mexico on January 10, 1949, and on the applicant's birth certificate, registered in Tamaulipas, Mexico on September 20, 1965; however the record also contains a Texas State, delayed issue birth certificate issued to the applicant's mother on November 17, 1964, reflecting that she was born in Texas on September 7, 1928. The record additionally contains a baptismal certificate reflecting that the applicant's mother was baptized in Corpus Christi, Texas on October 21, 1928, and evidence indicating that no birth certificate exists for the applicant's mother in Tamaulipas, Mexico. The record reflects that the applicant immigrated to the United States in 1970 pursuant to an alien relative petition filed by his mother.

(1) An application may be processed without interview if the USCIS officer adjudicating the case has in the administrative file(s) all the required documentation necessary to establish the applicant's eligibility for U.S. citizenship. . . .

(b) Witness

(1) Personal appearance. A witness shall be called to testify under oath or affirmation at the discretion of USCIS only if that person's testimony is needed to prove a particular point, and only if alternative proof is unavailable or more difficult to produce than is the witness.

Under 8 C.F.R. §341.2, the decision to call for applicant or witness testimony is at the discretion of USCIS. Moreover, the record in the applicant's case contains affidavits written by all of the individuals whom the applicant seeks to present as witnesses. The applicant therefore failed to establish that the director violated 8 C.F.R. § 341.2 by not interviewing proposed witnesses in his case.

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). In the present matter, the applicant was born in 1965. Section 301(a)(7) of the former Act therefore applies to his U.S. citizenship claim.²

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

² 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.

(Comm'r 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 his birth on July 5, 1965, at least five years of which were after his mother turned 14 on September 7, 1942, the applicant submits a birth certificate reflecting that his mother was born in Texas on September [REDACTED] and a baptismal certificate reflecting that his mother was baptized in Corpus Christi, Texas on October [REDACTED]. Death certificate evidence reflects that the applicant's maternal grandmother died in Bishop, Texas on [REDACTED].

The record also contains several affidavits from family members and friends of the applicant's mother. The applicant's paternal uncle, [REDACTED] and his uncle's wife, [REDACTED] state in affidavits dated February 25, 2013, that they lived near the applicant's parents in Mexico, and that for about 20 years, beginning around March or April 1951, they traveled with the applicant's parents annually to La Casita, Texas to work on a ranch for at least six months a year. The affiants indicate that they stayed in a home provided by the ranch when they were in Texas, they were paid in cash, and there is no record of their employment at the ranch.

[REDACTED] states in an affidavit dated June 27, 2011, that he has lived in Bishop, Texas since his birth in January 1933; that his grandparents adopted the applicant's maternal grandmother around 1911, and the applicant's maternal grandmother lived on the same street as his grandparents until she died in 1934; that he remembers that during her childhood, the applicant's mother stayed with his aunt in Kingsville, Texas; and that he remembers that the applicant's mother visited Bishop, Texas several times before she got married in Mexico.

The applicant's paternal aunt, [REDACTED] states, in affidavits dated, June 27, 2011 and August 28, 2013, that she met the applicant's mother in Mexico around 1948, and that she lived near the applicant's parents in Mexico until November 1970. She states that the applicant's mother told her about living and going to school in Bishop, Texas until January 1934, and about working on a farm in Texas when she traveled to the United States. The affiant states that she cared for the applicant and his siblings when their mother was away, and she remembers the applicant's mother being away from Mexico between 1956 and 1964, for about 6 months each year between March and September. She also states that she tried to get the applicant's mother's Texas school records, but was unable to do so because there were no computers when his mother went to school, there was a fire at the school, and all the school records were burned.

³ United States Census evidence reflects that the applicant's maternal grandmother resided in Texas in 1910 and 1920, prior to the applicant's mother's birth. Marriage certificate evidence reflects that the applicant's maternal grandparents married in Texas prior to the applicant's mother's birth, on December [REDACTED].

The applicant's sister, [REDACTED] states in an affidavit dated June 27, 2011, that she remembers staying with her aunt in Mexico from the time she was about 3 ½ years old until the 1970's, because her parents worked about six months a year in the United States as migrant workers.

The applicant's sister, [REDACTED] states in affidavits dated February 25, 2013 and August 28, 2013, that she remembers her mother and father being absent from Mexico between 1954 and 1970, for up to six months a year from around March to mid-September. She states that her parents told her that they worked in the United States when they were not in Mexico. Her mother also told her that she had lived in the United States until 1934, when the applicant's maternal grandmother passed away.

The applicant's cousins, [REDACTED] state in affidavits dated February 25, 2013, that they lived near the applicant's parents in Mexico. [REDACTED] adds that he remembers that the applicant's parents worked in the United States for six to eight months a year from about 1950 to 1970. The applicant's cousin, [REDACTED], states in an affidavit that he lived near the applicant's parents in Mexico, and that the applicant's parents did agricultural work in the United States each year from about Easter time until September between 1949 and 1970.

Friends, [REDACTED] state in affidavits dated February 25, 2013, that they lived near the applicant's parents in Mexico, and that they remember his parents working in the United States for about 6 months a year from about 1949 to 1970.

Upon review, we find that 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 the applicant's birth on July 5, 1965, at least five years of which were after his mother turned 14 on September 7, 1942, as required under section 301(a)(7) of the former Act. The U.S. Census, marriage and death certificate evidence contained in the record does not pertain to the applicant's mother, and fails to indicate that the applicant's mother was physically present in the United States until the applicant's maternal grandmother passed away in 1934; and the applicant's mother's birth and baptismal certificate evidence establishes only two months of U.S. physical presence prior to the applicant's birth.

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). Here, the affidavits contained in the record have diminished evidentiary weight. The affidavits from [REDACTED] his wife, and [REDACTED] lack material detail regarding exact dates and places that the applicant's mother worked and lived in the United States. The affidavits are also uncorroborated by independent evidence, and the record lacks evidence of the affiants' residence or employment in the United States during the claimed time periods. The remaining affidavits reflect that the affiants lived in Mexico during the U.S. physical presence time periods claimed for the applicant's mother. The

affiants thus had no personal knowledge of the applicant's mother's physical presence in the United States. The affidavits also lack material detail with regard to the dates and places that the applicant's mother worked and lived in the United States, and the claims are uncorroborated by independent evidence.

The regulation provides at 8 C.F.R. § 341.2(c) 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 meet his burden of proof. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.