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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



U.S. Citizenship
and Immigration
Services

DATE: JUN 12 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 in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630, or a request for a fee waiver. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

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, New Orleans, Louisiana (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 on May 13, 1982. The applicant's mother was born in Mexico on April 13, 1960, and acquired U.S. citizenship at birth through her U.S. citizen father. The applicant's deceased father was born in Mexico, and he was not a U.S. citizen.¹ 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 February 28, 2012, 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 the applicant's mother turned 14 years old, as required by section 301(a)(7) of the former Act. The application was denied accordingly.

Through counsel, the applicant asserts on appeal that affidavit and documentary evidence in the record is consistent, and establishes that the applicant's mother was physically present in the United States for the required period set forth in the former Act.

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 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 1982. Section 301(a)(7) of the former Act therefore applies to his citizenship claim.

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

¹ The applicant states on the Form N-600 that his father was a U.S. citizen; however, the record contains no evidence to corroborate this claim.

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 before the applicant's birth on May 13, 1982, at least five years of which were after his mother turned 14 on April 13, 1974, the applicant submits, in pertinent part, affidavits from his mother, family members, and a family friend; Social Security Administration employment records for his maternal grandfather; life insurance settlement and Social Security benefit letters; and medical documentation.²

The record also contains a copy of the applicant's mother's 2007 U.S. passport application, on which the applicant's mother responded to a question asking when she "ceased to reside in the United States," with the statement, "[n]ever lived in U.S." In response to a question asking when she "departed from the United States," the applicant's mother stated, "N/A."

In a sworn affidavit dated March 21, 2012, the applicant's mother indicates that she answered that she had never lived in the United States on her U.S. passport application because, although she had "been physically present in the United States," she considered herself "to have been a visitor because the house [her] parents owned was in [REDACTED]" She states that her father worked for the [REDACTED]; she traveled with her father to different places in the United States when he went to work; they stayed in rented hotel rooms for one to two weeks at a time, returning home to Mexico "on the weekends or every two weeks depending on where he was"; and they "spent more time in the United States than in Mexico." She adds that she was issued six month permits to visit the United States, and after her father's death, she spent time with her sister in [REDACTED]

The applicant's maternal cousin, [REDACTED], states in an undated affidavit that the applicant's mother is her maternal aunt, and that the applicant's mother lived with her family in Central New Mexico from 1975 to 1980. [REDACTED] states that her family cared for the applicant's mother after she was in a car accident in August 1977; the applicant's mother returned to [REDACTED] in January 1980; and the applicant's mother subsequently visited their family for a week, once a month, until May 1981.

A family friend, [REDACTED], states in an undated affidavit that from 1973 to 1980 the applicant's maternal grandfather brought the applicant's mother to her sister, [REDACTED] home in ([REDACTED] during the week while he worked, and he returned for her on the weekends. She states that the applicant's mother did not attend school between 1973 and 1980. She states further that the applicant's mother was in a car accident in New Mexico in August 1977; that

² Additional evidence of the applicant's maternal grandfather's physical presence in the United States is contained in the record. This documentation is not relevant to the applicant's citizenship claim and will therefore not be discussed.

cared for, and took the applicant's mother to doctor's appointments while she recovered; and that the applicant's mother returned to in January 1980, but subsequently "would come and spend a few days with her sister and return to until she married in May of 1981."

The applicant's maternal aunt, , states in an undated affidavit that she was 12-years-old when the applicant's mother was born, and that she is the applicant's mother's older sister. She states that the applicant's mother was in the United States from the time she "was about one year old to when she was six years old," and that she and her older sister took care of their siblings in Mexico while the applicant's mother traveled with their parents "to different parts of the state of New Mexico depending on where [their] father was working." The applicant's mother and their parents usually returned to Mexico "every weekend" or sometimes "every two weeks," and the applicant's mother was enrolled in school in Mexico at the age of six, and attended school for five years in Mexico. After that, the applicant's mother "was physically present in the U.S. as she continued to go with [their] father to the city where he was working, returning to Mexico usually on the weekends." states that after 1972, the applicant's mother stayed with her in the United States until January 1980, returning to , Mexico with their father "on weekends and coming back on Mondays." also discusses an August 1977 car accident that the applicant's mother, their parents, and two brothers were in, and states that she cared for the applicant's mother and took her to doctor's appointments for about eight months after the accident. After the applicant's mother returned to Mexico in January 1980, she spent "about one week a month" with in New Mexico until 1981.

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). The AAO finds that the affidavits in the present matter have diminished evidentiary weight.

All of the affidavits lack material detail with regard to the exact dates or locations of the applicant's mother's physical presence in the United States. In addition, the record lacks evidence to corroborate claims that the affiants resided in the United States at any time, and the record lacks documentary evidence establishing the identity of the affiants. The affidavits also contain material discrepancies with one another, and with other evidence regarding the dates and locations of the applicant's mother's physical presence in the United States. The applicant's mother states on her 2007 U.S. passport application that "she never lived in the U.S.," and she responds to a question asking whether she departed the United States by stating that the question is "N/A". She states in her 2012 affidavit, however, that she frequently traveled with her father to New Mexico, that she stayed with her father in hotels during the week before returning home to Mexico on weekends or every two weeks, and that she "spent more time in the United States than in Mexico." These statements contradict statements made in the applicant's mother's passport application. The statements also contradict the applicant's cousin's claim that the applicant's mother stayed at their home in New Mexico from 1975 to 1980; claim that the applicant's mother stayed at their home in New Mexico during the week from 1972 to 1980, while their father worked in New Mexico; and claim that the applicant's mother stayed with

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[REDACTED] during the week from 1973 to 1980. Moreover, the claims made by the applicant's cousin, aunt and family friend are materially inconsistent with regard to the dates of the applicant's mother's physical presence in the United States.

The record also lacks documentary evidence to corroborate the claim that the applicant's mother was physically present in the United States for 10 years prior to the applicant's birth, at least five years of which were after his mother turned 14 on April 13, 1974. [REDACTED] indicates in her affidavit that the applicant's mother was in the United States from the time she was one (around 1961) until she turned six-years-old (in 1966), due to their father's work in the United States. The record contains no documentary evidence to corroborate this claim. Moreover, Social Security Administration evidence contained in the record reflects limited earnings for the applicant's maternal grandfather between 1961 and 1966, with him earning no income in 1963; a total of \$249.00 in 1961; \$510.61 between October and December of 1962; \$403.01 between October and December of 1964; \$26.00 between January and March of 1965; and \$760.50 between October and December of 1966.

The affiants state that the applicant's mother received medical treatment in New Mexico after a car accident in August 1977; however, although the record contains medical documentation reflecting that the applicant's maternal grandfather and maternal uncle [REDACTED] received medical treatment in New Mexico in August 1977, the record lacks any evidence to indicate or establish that the applicant's mother received medical treatment.

The record reflects that in 1979 and 1980, life insurance settlement and Social Security benefit letters were mailed to the applicant's mother at a post office box address in New Mexico; however, this fails to establish that the applicant's mother was physically present in the United States at that time, or that she was physically present in the United States for 10 years prior to the applicant's birth, at least five years after her 14th birthday.

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 mother was physically present in the United States for the required period set forth in section 301(a)(7) of the former Act. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.