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

(b)(6)

[redacted]

DATE: [redacted] OFFICE: LOS ANGELES, CA

IN RE: [redacted]

JUN 18 201

APPLICATION: Application for Certificate of Citizenship under Section 201(c) of the Nationality Act of 1940, 8 U.S.C. §601(c)

ON BEHALF OF APPLICANT:

[redacted]

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, Los Angeles, California (the director) and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant was born in Mexico on March 2, 1948. He seeks a certificate of citizenship pursuant to section 201(c) of the Nationality Act of 1940, Pub. L. 76-853, 54 Stat. 1137 (October 14, 1940), 8 U.S.C. § 601(c), (the Nationality Act of 1940).

In a decision dated February 1, 2012, the director determined that the applicant had failed to establish that his father was a U.S. citizen, or that his father met U.S. physical presence requirements as set forth in former section 301 of the Immigration and Nationality Act (the former Act), 8 U.S.C. § 1401. The applicant therefore failed to establish that he acquired U.S. citizenship at birth through his father. The application was denied accordingly.

Through current counsel the applicant refers, on appeal, to sections 301 and 324 (8 U.S.C. § 1435) of the current Act, and asserts that evidence establishes his father was born a U.S. citizen and that his father was physically present in the United States for ten years prior to the applicant's birth, at least five of which were after his father turned 16 years old. To support his assertions, counsel submits U.S. passport and delayed birth certificate evidence for the applicant's father.

In addition, the applicant asserted through previous counsel that he acquired U.S. citizenship at birth under current section 301(c) of the Act, 8 U.S.C. § 1401(c), because both of his parents were U.S. citizens when he was born, and his father resided in the United States prior to his birth. To support these assertions the record contains U.S. passport and certificate of citizenship evidence for the applicant's mother, U.S. school record information for the applicant's father, and affidavits from persons attesting to the applicant's father's birth and residence in the United States. The entire 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 to 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). Because the applicant was born in 1948, the provisions contained in the Nationality Act of 1940 apply to his claims of acquiring U.S. citizenship at birth through his parents.[1]

Section 201(c) of the Nationality Act of 1940 provided that the following shall be nationals and citizens of the United States at birth:

> A person born outside of the United States and its outlying possessions of parents both of whom are citizens of the United States and one of whom has resided in the United States or one if its outlying possessions prior to the birth of such person[.]

[1] The director's decision cites to section 301(a)(7) of the former Act. That section is inapplicable to this case as the applicant was born prior to the former Act's effective date.

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 demonstrate that his father was born in the United States the applicant submits: a September 28, 1988, California Superior Court "Order Establishing Fact of Birth" reflecting that his father was born in ; and a "Court Order Delayed Registration of Birth" issued to the applicant's father in California on sixty-five years after his father's birth. The documents reflect that they were issued on the basis of the applicant's father's petition to establish a record of his birth, and affidavit statements from) and

The record contains the affidavits from states in her affidavit, dated February 3, 1988, that she was born on she resided in and she was present when the applicant's father was born at the in states in an affidavit dated April 15, 1986, that the applicant's father is his cousin, and that he has knowledge of the applicant's father's birth in on because his "mother was present at birth." The applicant's father states in a March 14, 1988 affidavit, that he recently learned that he was born at the in

The Board of Immigration Appeals (Board) addressed the evidentiary weight to be given to a delayed birth certificate in *Matter of Serna,* 16 I&N Dec. 643, 645 (BIA 1978), indicating that the evidentiary value is rebutted by contradictory evidence, but also clarifying that there is no set rule of evidence on the issue and that each case "must be decided on its own facts with regard to the sufficiency of the evidence presented as to the petitioner's birthplace." *Id.* 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). Upon review, the AAO finds that the delay registration of birth and affidavit evidence in the present matter have diminished evidentiary weight.

The claims made by are not based on personal knowledge, and the statements by and the applicant's father lack details about the circumstances and bases of their knowledge of the applicant's father's birthplace. The record also lacks corroborative evidence to establish that resided in the United States at any time, or to establish the affiants' identity, or relationship to the applicant's father. Furthermore, the information contained in the

affidavits is materially inconsistent with other evidence contained in the record regarding the location of the applicant's father's birth. According to a transcript, the applicant's father was born in Arizona Public School transcript reflects that the applicant's father was born in New Mexico on . In addition, the record contains a "Certificate of No Record" from the State of Arizona, demonstrating that no record of the applicant's father's birth in Arizona was found. Moreover, the record contains a Mexican birth certificate, registered on , stating that the applicant's father was born in the State of Sinaloa, Mexico on Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The record also contains evidence that the applicant's father was issued a U.S. passport valid for ten years on , and he was issued a new U.S. passport on valid through In *Matter of Villanueva,* 19 I&N Dec. 101, 103 (BIA 1984), the Board stated that United States passports have the same weight for proof of U.S. citizenship as certificates of naturalization or citizenship, and the Board held that a valid U.S. passport constitutes conclusive proof of a person's U.S. citizenship. However, where, as here, the applicant has failed to establish statutory eligibility for U.S. citizenship a certificate of citizenship cannot be issued. *See Fedorenko v. U.S.,* 449 U.S. 490, 506 (1981) (stating that strict compliance with statutory prerequisites is required to acquire citizenship.)

Regarding his mother, the applicant submits U.S. passport and certificate of citizenship evidence to establish that his mother acquired U.S. citizenship at birth through a parent; however, the applicant does not assert that his mother was physically present in the United States prior to his birth, and the record contains no evidence to establish such presence.

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 born a U.S. citizen, or that he was born to two U.S. citizen parents. Accordingly, the applicant does not meet the requirements for acquiring citizenship as set forth in section 201(c) of the Nationality Act of 1940.

ORDER: The appeal is dismissed.