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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: **MAY 02 2013**

OFFICE: HOUSTON, TX

FILE: [REDACTED]

IN RE: [REDACTED]

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:

SELF-REPRESENTED

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,

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

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, Houston, 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 on September 5, 1958 to married parents. The applicant's father was born in Mexico and derived U.S. citizenship at birth through a parent. The applicant's mother was born in Mexico and is 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 father.

In a decision dated February 13, 2013, the director determined the applicant had failed to establish that his father was physically present in the United States for 10 years prior to the applicant's birth, 5 years of which were after the applicant's father turned 14, as required by section 301(a)(7) of the former Act. The application was denied accordingly.

The applicant asserts on appeal that he is attempting to locate a sworn statement made by his mother in 2004 regarding his father's physical presence in the United States prior to his birth; that he is also trying to locate a U.S. citizen half-brother born to his father prior to his birth; and that his father told him he worked in Galveston, Texas around 1946 or 1948. The applicant submits no new evidence on appeal.

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). The applicant in this case was born in 1968. Section 301(a)(7) of the former Act therefore applies to his citizenship claim.¹

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

To establish that his father was physically present in the United States for 10 years before the applicant's birth on September 5, 1958, at least 5 years of which were after his father turned 14 on

¹ 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.

April 21, 1935, the record contains: a certificate of citizenship issued to the applicant's father on March 15, 1984, and reflecting that the applicant's father resided in Michigan; U.S. Social Security Administration evidence reflecting that the applicant's father's employment history in the United States began in 1956; and a letter reflecting that the applicant's father worked as a production laborer for a company in Detroit, Michigan from May 21, 1956 to May 21, 1962.

The documentary evidence fails to establish that the applicant's father was physically present in the United States for the requisite time period set forth in section 301(a)(7) of the former Act. The applicant's father's certificate of citizenship was issued in 1984, and thus only reflects his residence in the United States at that time. The Social Security Administration and employment evidence establishes the applicant's father's physical presence in the United States for only two years prior to the applicant's birth in 1958.

Furthermore, although the applicant asserts on appeal that his father told him he worked in Galveston, Texas around 1946 or 1948, the assertion lacks detail regarding the exact dates and circumstances of his father's physical presence in the United States; moreover, the record lacks any evidence to corroborate the applicant's assertions. Similarly, the applicant's assertions that his father had a son in the United States prior to the applicant's birth, and that his mother gave a sworn statement in 2004 indicating that his father was "in and out of the United States" before their marriage, also lack detail and are uncorroborated by evidence in the record.

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)).

In the present matter, 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(a)(7) of the former Act. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.