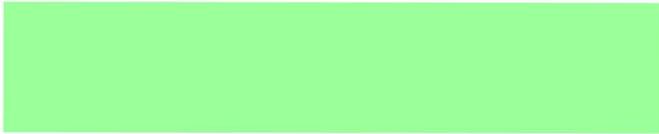


(b)(6)



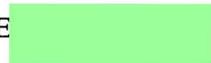
U.S. Citizenship
and Immigration
Services



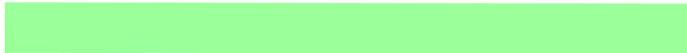
DATE: **MAY 16 2013**

OFFICE: MIAMI, FL

FILE



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:

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.

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, Miami, Florida (the director), and the matter is now before the Administrative Appeals Office (AAO) on appeal. The matter is remanded to the director for action consistent with this decision.

The applicant was born out of wedlock in the Dominican Republic on April 27, 1959. She was legitimated through the marriage of her parents on May 6, 1972. The applicant's father was born in Puerto Rico on August 4, 1914 and was a U.S. citizen. The applicant's mother was born in the Dominican Republic and is not a U.S. citizen. The applicant seeks a certificate of citizenship pursuant to 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 she acquired U.S. citizenship at birth through her father.

In a decision dated August 20, 2012, the director determined that the applicant had failed to establish that her 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 indicates on appeal that the evidence in the record establishes her father met the physical presence requirements set forth in the former Act. She indicates further that she has been issued three U.S. passports based on similar evidence. In support of her assertions, the applicant submits copies of U.S. passports issued to her in 1990, 2000, and 2010, and copies of documents obtained from her Department of State passport file. The record additionally contains birth certificate and marriage certificate evidence for the applicant's father; copies of U.S. passports issued to her father; Social Security Administration and employment evidence for her father; and evidence that her sister has been issued U.S. passports and a certificate of citizenship. The record also contains Spanish-language documents.

The regulation provides at 8 C.F.R. § 103.2(b)(3) that:

Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

The Spanish-language documents that are not accompanied by certified English translations cannot be considered in the applicant's case. The entire remaining record was reviewed and considered in rendering a decision on the appeal

Because the applicant was born abroad, she is presumed to be an alien and bears the burden of establishing her 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 "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 he or she 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 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 1959. Section 301(a)(7) of the former Act therefore applies to her 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 10 years, at least 5 of which were after attaining the age of 14 years

To establish that her father was physically present in the United States for 10 years before the applicant’s birth on April 27, 1959, at least 5 years of which were after her father turned 14 on August 14, 1928, the record contains a partial, undated, and unsigned Affidavit of Paternity stating that the applicant’s father was physically present in the United States during the following time periods: in Caguas, Puerto Rico from 1914 to 1927; in Rio Piedra, Puerto Rico from 1929 to 1935; in New York, New York from 1935 to 1937; in Indiana, Indianapolis from 1937 to 1940; and in Chicago in 1940.

The record also contains a birth certificate reflecting that the applicant’s father was born in Caguas, Puerto Rico on August 18, 1914; a Social Security Administration earnings statement reflecting that between 1951 and 1985 the applicant’s father earned \$5549.85; an undated training certificate reflecting that the applicant’s father completed a merchandising development clinic for the [REDACTED], located in South Bend, Indiana; and a letter from the U.S. Department of Commerce stating that the [REDACTED] company was sold to [REDACTED] around 1950, that [REDACTED] subsequently developed products under the [REDACTED] name, and that the validity of the [REDACTED] training program could not be confirmed.

The AAO finds that the applicant has failed to establish by a preponderance of the evidence that her father was physically present in the United States for 10 years before the applicant’s birth on April 27, 1959, at least 5 years of which were after her father turned 14 on August 14, 1928. It is noted that the applicant’s father’s affidavit of paternity is unsigned, undated, and incomplete. Moreover, the physical presence information contained therein is uncorroborated by independent evidence in the record. Although the applicant’s father’s birth certificate establishes his birth in Puerto Rico in

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.

August 1914, the training program and employment documentation fail to establish that the applicant's father worked, or attended a training program in the United States. Moreover, although Social Security Administration evidence reflects the applicant's father earned \$5549.85 between 1951 and 1985, it is noted that most of those years occurred after the applicant's birth in 1959, and the evidence does not establish when, or under what circumstances the applicant's father earned his income. Furthermore, the record lacks documentary evidence to corroborate assertions that the applicant's father was physically present in the United States during any of the other time periods mentioned in his paternity affidavit. Overall, the evidence fails to demonstrate that the applicant's father met the physical presence requirements set forth in section 301(a)(7) of the former Act.

The applicant indicates that the Service has issued her sister, [REDACTED], a certificate of citizenship based on similar evidence. The AAO notes, in this regard, that each petition filing is a separate proceeding with a separate record. Accordingly, in making a determination of statutory eligibility, the Service is limited to the information contained in that individual record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii).

The AAO additionally notes that the record contains evidence that since 1990, the applicant has been issued three U.S. passports. The most recent passport was issued on October 18, 2010 and is valid until October 17, 2020.

In *Matter of Villanueva*, 19 I&N Dec. 101, 103 (BIA 1984), the Board of Immigration Appeals (Board) held that a valid U.S. passport is conclusive proof of 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.)

Because the record does not demonstrate the evidentiary basis upon which citizenship was established for U.S. passport purposes, the submission of additional documentation may be required or the passport file may need to be requested. The matter will therefore be remanded to the director for further action. If after review there are differences or discrepancies between the Service's information and the Passport Office records which would indicate that the application should not be approved, no action should be taken until the Passport Office has an opportunity to review and decide whether to revoke the passport. The director shall issue a new decision once the Passport Office's review is completed and, if adverse to the applicant, shall certify the decision to the AAO for review.

ORDER: The matter is remanded to the director for action consistent with this decision and for issuance of a new decision, which, if adverse to the applicant, shall be certified to the AAO for review.