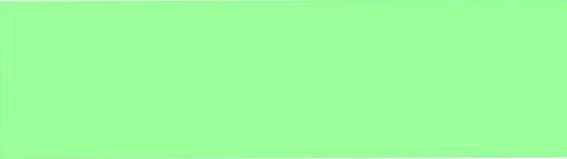


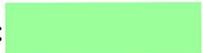
(b)(6)

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 20 2013** OFFICE: HARLINGEN, TX 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:


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, Harlingen, 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 December 24, 1969 to married parents. The applicant's father was born in Mexico on February 7, 1932, and acquired U.S. citizenship at birth through a parent. The applicant's mother was born in Mexico and was not a U.S. citizen. Both of the applicant's parents are now deceased. 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 September 12, 2012, the director determined that the applicant failed to meet her burden of establishing 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.

Through counsel, the applicant indicates on appeal that the director failed to consider the aggregate evidence in the applicant's case; that the sworn affidavits in the record are reliable and consistent, and have the same evidentiary weight as documentary evidence; that inconsistent statements about dates of physical presence made by the applicant's father on his Form N-600 application were vague and not made under oath, and thus do not conflict with affidavit statements; and that U.S. border crossing card information found on an internet site constitutes evidence with regard to the applicant's father's physical presence in the United States. In support of the assertions, counsel submits affidavits from family members; Social Security Administration earnings statements for the applicant's father; information relating to Form N-600s filed by the applicant's father in February 1961; and photographs. In addition, the record contains birth and marriage certificate evidence, and border-crossing card information obtained from the internet website, Ancestry.com.

The record also contains Spanish-language documentation. The regulation at 8 C.F.R. § 103.2(b)(3) provides 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.

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 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 was born in 1969. 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 ten years, at least five of which were after attaining the age of fourteen years

Because the applicant was born abroad, she 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 establish that her father was physically present in the United States for 10 years before the applicant’s birth on December 24, 1969, at least 5 years of which were after her father turned 14 on February 7, 1946, the record contains a certificate of citizenship issued to the applicant’s father on April 30, 1968, reflecting that the applicant’s father resided in Texas; U.S. Social Security Administration evidence reflecting that the applicant’s father’s employment history in the United States began in 1967; photographs; and documentation obtained from the internet indicating that the applicant’s father was issued a U.S. border crossing card in 1949.

The record also contains affidavits from family members attesting to the applicant’s father’s physical presence in the United States. The applicant’s brother states in a July 5, 2012 affidavit that their father worked as a musician in Texas, traveled there frequently, and that “at times” their father lived with family in Texas. In addition, he adds that their father helped an uncle open a welding shop in Texas between 1965 and 1966, and that he went to the United States with their father between 1961 and 1970.

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.

A paternal aunt, born October 22, 1922, states in a November 15, 2011 affidavit that between about 1937 and 1940 the applicant's father attended school in Texas. He later played music at social events in Texas, and during 1949, and the 1950s, 1960s and 1970s, he "sometimes" stayed with family in Texas.

The applicant's paternal aunt, born May 28, 1927, states in a November 1, 2010 affidavit that the applicant's father lived in Texas with their sister, [REDACTED], in 1949, and that he lived with [REDACTED] for about 6 years.

The applicant's cousin, born March 28, 1940, states in a December 3, 2010 affidavit that she lived in Texas in 1949, and that the applicant's father lived with his aunt in Texas in 1949.

The applicant's sister states in a November 29, 2012 affidavit that she remembers her father talking about time he spent in the United States, and that her father was a migrant worker in Texas from August to October 1966. She also remembers going to the United States with her father for 2 weeks at Easter time in 1965, for 3 weeks in 1967, for a family reunion in 1968, and several times in 1966.

The record also contains copies of two Form N-600s filed by the applicant's father on February 3, 1961 and on February 5, 1966. The applicant's father states on both Form N-600s that he arrived in the United States on January 27, 1961. Additional information contained in the second Form N-600, and initialed by the applicant's father, states that he was in Texas from May 1961 to March 5, 1966; from June 1966 to November 6, 1967; and for about 6 months with his parents around 1936.

In addition, the record contains a Form I-215a, Immigration and Naturalization Service sworn affidavit signed by the applicant's father in Texas on March 19, 1961, in which the applicant's father states that he met with an immigration attorney in the United States on January 27, 1961, on January 31, 1961, and at least 4 times in 1960; and that he stayed in Texas with his brother-in-law's brother from February 1, 1961 to March 18, 1961, when he was arrested by U.S. immigration officers.

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). In the present matter, the affidavits contained in the record have diminished evidentiary weight, in that they contain material inconsistencies with each other regarding the claimed dates and time periods that the applicant's father was in the United States. Furthermore, the affidavits are materially inconsistent with statements provided by the applicant's father regarding his physical presence in the United States.

It is further noted that the record lacks documentary evidence to corroborate the claims made in the affidavits, and by the applicant's father regarding his physical presence in the United States. U.S. Social Security Administration evidence reflects that the applicant's father earned no income prior to 1967, and that he earned \$199.00 in 1967, \$903.30 in 1968, and \$410.15 in 1969. The evidence does not establish that the applicant's father was employed full-time in the United States between 1967 and 1969, and the evidence fails to establish the amount of time he was physically present in the United States during that period. The applicant's father's certificate of citizenship, issued on

April 30, 1968, also fails to establish the amount of time the applicant's father was in the United States before, or after his certificate of citizenship was issued. Moreover, the photographs fail to demonstrate that the applicant's father attended school in the United States, or that he was physically present in the United States as a child. It is noted that the Ancestry.com-based U.S. border crossing card evidence contained in the record is not an official government document and thus has limited evidentiary weight. It is further noted that issuance of a border crossing card would not establish the applicant's father's physical presence in the United States prior, or subsequent to issuance of the card.

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. In the present matter, 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 December 24, 1969, at least 5 years of which were after her father turned 14 on February 7, 1946, as required by section 301(a)(7) of the former Act. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.