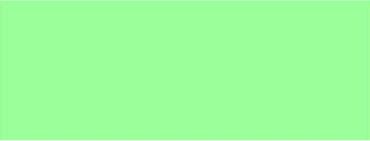


(b)(6)

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



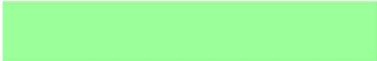
U.S. Citizenship  
and Immigration  
Services



DATE: **MAY 23 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:

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,

  
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 September 8, 1962. The applicant's mother was born in Mexico on November 22, 1939, and acquired U.S. citizenship at birth through a parent. The applicant's deceased father was born in Mexico, and he was 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 mother.

In a decision dated September 18, 2012, the director determined that the applicant 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 former section 301(a)(7) of the former Act. The application was denied accordingly.<sup>1</sup>

The applicant asserts on appeal that the director erroneously required him to establish that his mother resided in the United States for 10 years prior to his birth, rather than demonstrating that she was physically present in the United States for the required period set forth in the former Act. The applicant indicates on the Form I-290B notice of appeal that he will submit a brief and/or evidence to the AAO within 30 days of filing the appeal; however, no brief or evidence was received.

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 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 1962. Section 301(a)(7) of the former Act therefore applies to his citizenship claim.<sup>2</sup>

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

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<sup>1</sup> The record also contains two Form N-600 applications denied by the Service on June 2, 2010 and on August 25, 2010. Neither decision was appealed to the AAO.

<sup>2</sup> 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.

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 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 September 8, 1962, at least five years of which were after his mother turned 14 on November 22, 1953, the record contains affidavits from the applicant’s mother and family members; a 1961 Laredo, Texas city directory; certificates of baptism for two of the applicant’s siblings; and a copy of the applicant’s mother’s Form N-600.<sup>3</sup>

The applicant’s mother states in an affidavit dated November 22, 2011, that she accompanied her mother to work in Texas on several occasions when she was around seven and eight years old. She also went to the United States one to two times a month to buy groceries, and she attended local parades in Texas during that time period. When she was around 10 or 11 years old she helped her mother clean houses in Texas one to two times a week, and she cleaned houses with her mother three to four times a week when she was around 11 and 12 years old. She moved to Laredo, Texas to work as a live-in maid at the [redacted] residence in January 1953, when she was 13, and she remained there until about 1966.

The applicant’s mother’s sister-in-law states in an affidavit dated August 14, 2009, that she knew the applicant’s mother in Mexico and has known her since 1951; and that the applicant’s mother worked as a live-in maid in Laredo, Texas from January 1953, when she was 15, until February 1966, returning to Mexico only on weekends and some holidays.

The applicant’s cousin states in an October 3, 2009 affidavit that she lived next door to the applicant’s mother (her aunt) in Mexico from 1962 to 1966; that her aunt worked in Laredo, Texas during that time; and that her mother cared for, and “basically raised” the applicant due to her aunt’s work in Laredo, Texas.

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<sup>3</sup> Documentation relating to the applicant’s paternal grandmother’s physical presence in the United States is also contained in the record. This documentation is not relevant to the applicant’s citizenship claim and will therefore not be discussed.

A 1961 city directory for Laredo, Texas contains the names [REDACTED]. Two baptism certificates reflect the applicant's siblings were baptized in 1964 and 1965, and that [REDACTED] were listed as sponsors.

The record also contains a copy of the applicant's mother's Form N-600, signed by her on November 19, 2009, stating that she arrived in the United States on January 3, 1953, and that she has not been absent from the United States since that date.

In ascertaining the evidentiary weight of affidavits, the Service must determine the basis for the affiant's knowledge of the information to which 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 affidavits in the present matter have diminished evidentiary weight. It is noted that all of the affidavits lack material detail with regard to the exact dates of the applicant's mother's physical presence in the United States. Moreover, the applicant's mother's sister-in-law and niece state that they were in Mexico during the periods of time they claim the applicant's mother worked in the United States. They thus have no personal knowledge of the applicant's mother's physical presence in the United States. In addition, the applicant's mother states on her Form N-600 that she arrived in the United States in January 1953 and had no departures from the country at the time that her Form N-600 was signed in November 2009. She states in her affidavit, however, that she spent significant periods of time working in, and accompanying her mother to the United States prior to January 1953, and that she lived in the United States only from about January 1953 until 1966. Material inconsistencies therefore exist between statements made in the applicant's mother's affidavit and in her Form N-600.

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 on September 8, 1962, at least five years of which were after his mother turned 14 on November 22, 1953. Although the 1961 Laredo, Texas city directory contained in the record lists the names of two people who were sponsors at the applicant's sibling's baptisms in 1964 and 1965, the record contains no evidence establishing that these people employed the applicant's mother, or that she lived with them at any time in Laredo, Texas.

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.