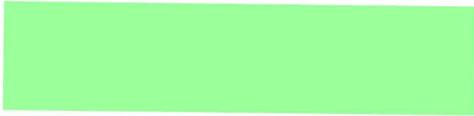


(b)(6)

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

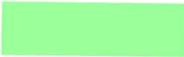


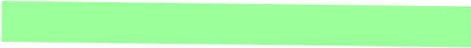
U.S. Citizenship
and Immigration
Services



DATE: NOV 05 2013

OFFICE: EL PASO, 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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

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

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Form N-600, Application for Certificate of Citizenship (Form N-600) was denied by the Field Office Director, El Paso, 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, 1978, to unmarried parents. Her parents married in Texas on April 13, 1983, when the applicant was four years old. The applicant's father was born in [REDACTED] Texas on September 3, 1955, and he is a U.S. citizen. The applicant's mother 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 June 4, 2013, the director determined that the applicant had failed to meet her burden of establishing that her father was physically present in the United States for 10 years prior to her birth, five 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 that her father was physically present in the United States for the time periods specified in section 301 of the former Act. In support of the assertions, the record contains a letter from the applicant's father; academic transcripts and Social Security earnings information for the applicant's father; U.S. birth certificates for the applicant's father, her half-brother, and her half-sister; and photographs.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). 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 was born in Mexico on December 24, 1978. 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

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.

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 prior to her birth on December 24, 1978, at least five years of which were after her father turned 14 on September 3, 1969, the record contains the applicant’s father’s birth certificate reflecting that he was born in [REDACTED] Texas on September 3, 1955. Additional birth certificate evidence reflects that the applicant’s father had two children born in [REDACTED] Texas on April 12, 1975, and February 3, 1978. Academic records reflect that the applicant’s father attended school in [REDACTED] Texas between August 1970 and May 1974.

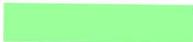
Social Security Administration evidence reflects the following U.S. earnings history for the applicant’s father between 1972 and 1978:

1972 - \$332.00
1973 - \$1048.00
1974 - \$1156.00
1975 - \$3014.00
1976 - \$4983.00
1977 - \$6729.00
1978 - \$5480.00

In addition, the applicant’s father states in a letter, dated July 2, 2013, that he was in the [REDACTED] Texas in 1974. He states that he was unable to obtain evidence of his [REDACTED] service due to financial hardship, and he indicates that other evidence of his physical presence in the United States during the required time periods has been lost or thrown away.

Upon review we find that, at best, the evidence contained in the record establishes that the applicant’s father was physically present in the United States for up to eight years prior to the applicant’s birth on December 24, 1978, at least five years of which were after her father turned 14 on September 3, 1955. The applicant has failed, however, to establish by a preponderance of the evidence, that her father was physically present in the United States for 10 years prior to her birth, as required under section 301(a)(7) of the former Act.

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 (Commr. 1989). Here, the letter from the applicant's father has diminished evidentiary weight, as the record lacks verifiable or documentary evidence to corroborate assertions that he was physically present in the United States for 10 years prior to the applicant's birth. Moreover, while academic records establish the applicant's father's physical presence in the United States between August 1970 and May 1974, the evidence fails to establish that the applicant's father was continuously present in the United States prior to August 1970, or after May 1974. Social Security Administration evidence reflects that the applicant's father earned income in the United States between 1972 and 1978, however, the income is limited and varies from year to year. The Social Security evidence also fails to indicate or establish the dates that the applicant's father worked, where he worked, or that he lived in the United States during the periods that he earned income in the United States. In addition, the birth certificate evidence contained in the record fails to establish how long the applicant's father was physically present in the United States during the time periods surrounding his, or his children's births.

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 meet her burden of proof. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.