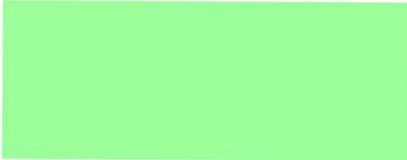


(b)(6)

U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Service  
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: SAN DIEGO, CA

FILE:

IN RE: Applicant:

APPLICATION: Application for Certificate of Citizenship

ON BEHALF OF APPLICANT:

SELF-REPRESENTED<sup>1</sup>

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  
  
Ron Rosenberg  
Chief, Administrative Appeals Office

<sup>1</sup> The Form I-290B, Notice of Appeal or Motion, was filed by attorney but it was not accompanied by the required new Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative. On October 15, 2013, the AAO notified attorney of this deficiency and allowed for seven days in which to submit, via facsimile, a new Form G-28 in accordance with the regulations at 8 C.F.R. § 292.4(a). The AAO has not received any response to the October 15, 2013 request. The applicant will therefore be deemed to be self-represented.

**DISCUSSION:** The appeal was denied by the Field Office Director, San Diego, California, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born in Mexico on July 19, 1947. The applicant's parents were not married to each other. The applicant claims that her mother was born in Texas on August 28, 1927. She seeks a certificate of citizenship claiming that she acquired U.S. citizenship at birth through her mother.

The field office director denied the applicant's citizenship claim upon finding that she had failed to establish that her mother resided in the United States as required in order to transmit U.S. citizenship.

On appeal, the applicant, through counsel, maintains that she provided evidence that her mother's school records were destroyed in a hurricane in 1943. See Statement Accompanying Form I-290B, Notice of Appeal or Motion.

The AAO reviews these proceedings *de novo*. 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. See *Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1028 n.3 (9<sup>th</sup> Cir. 2001) (internal citation omitted). The applicant in the present matter was born in 1947. The Nationality Act of 1940 was in effect at the time of the applicant's birth. Because the applicant was born out of wedlock to a U.S. citizen mother, section 205 of the Nationality Act is applicable to her acquisition of citizenship claim.

Section 205 of the Nationality Act provided, in relevant part, that

[a] child, whether born before or after the effective date of this Act, if the mother had the nationality of the United States at the time of the child's birth, and had previously resided in the United States . . . shall be held to have acquired at birth her nationality status.

The record contains no evidence of the applicant's mother's U.S. residence. The applicant has submitted a copy of her mother's delayed birth certificate issued in 1970. The birth certificate does not cite to any supporting documentation provided in conjunction with the request for the delayed birth certificate. The applicant, through counsel, explains why her mother's school records are unavailable. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). If a required document does not exist or cannot be obtained, the applicant must demonstrate this and submit secondary evidence pertinent to the facts at issue. *Id.* The applicant did not submit any alternative evidence or explain why any other evidence is unavailable. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). The unsupported assertions of counsel do not constitute

Page 3

evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.