



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: OCT 07 2013

OFFICE: SAN FRANCISCO, CA

FILE: [REDACTED]

IN RE: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under former Sections 321 and 301 of the Immigration and Nationality Act; 8 U.S.C. §§ 1432 and 1401

ON BEHALF OF APPLICANT:
[REDACTED]

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, San Francisco, California (the director), 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 the Philippines to married parents on October 11, 1981. His parents divorced on December 2, 1999, when the applicant was 18 years old. The applicant's father became a naturalized U.S. citizen on June 18, 1996, when the applicant was 14. His mother became a naturalized U.S. citizen on December 3, 2002, when the applicant was 21 years old. The applicant was admitted into the United States as a lawful permanent resident on December 14, 1996, when he was 15. He presently seeks a certificate of citizenship pursuant to sections 321 and 301 of the former Immigration and Nationality Act (the former Act), 8 U.S.C. §§ 1432 and 1401, based on the claim that he acquired U.S. citizenship through his mother.

The director determined, in pertinent part, that the applicant failed to establish that he was born to a U.S. citizen parent; that while his parents were married, and prior to the applicant's 18th birthday, his parents both became naturalized U.S. citizens; or that subsequent to his parents' divorce, and prior to his 18th birthday, the applicant was in the legal custody of a U.S. citizen parent. The Form N-600 application was denied accordingly.

On appeal the applicant asserts, through counsel, that although his mother became a naturalized U.S. citizen in 2002, she acquired U.S. citizenship at birth through her naturalized U.S. citizen father. Counsel indicates that the applicant therefore meets U.S. citizenship requirements under the former Act.¹ In support of the assertions, counsel submits ship manifest and U.S. military records for the applicant's maternal grandfather, and a declaration written by the applicant's mother.

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.

Section 321 of the former Act provided, in pertinent part, that:

(a) A child born outside of the United States of alien parents . . . becomes a citizen of the United States upon fulfillment of the following conditions:

- (1) The naturalization of both parents; or
- (2) The naturalization of the surviving parent if one of the parents is deceased;
or
- (3) The naturalization of the parent having legal custody of the child when there has been a legal separation of the parents or the naturalization of the mother if the child was born out of wedlock and the paternity of the child has not been established by legitimation; and if-

¹ Counsel does not assert under which provision of the former Act the applicant qualifies for U.S. citizenship.

(4) Such naturalization takes place while said child is under the age of 18 years; and

(5) Such child is residing in the United States pursuant to a lawful admission for permanent residence at the time of the naturalization of the parent last naturalized under clause (2) or (3) of this subsection, or thereafter begins to reside permanently in the United States while under the age of 18 years.

The provisions contained in section 321 of the former Act explicitly require, among other things, that the applicant for citizenship be born of alien parents. Any indication by counsel that the applicant satisfied section 321 of the former Act provisions based on a parent who had acquired U.S. citizenship at birth, is therefore unconvincing.

The evidence in the record reflects that the applicant's mother is alive, and that she did not become a naturalized U.S. citizen until December 3, 2002, when the applicant was 21 years old. The applicant therefore failed to establish that he meets the requirements contained in section 321(a)(1) and (2) of the former Act. Moreover, divorce decree evidence contained in the record demonstrates that the applicant's parents obtained a divorce on December 2, 1999, after the applicant turned 18 years old, and legal custody over the applicant was awarded to his mother. The applicant thus also failed to establish that he meets the requirements contained in section 321(a)(3) of the Act. Accordingly, the applicant has failed to establish that he qualifies for derivative citizenship under section 321 of the former Act.

"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, 1029 (9th Cir., 2000) (citations omitted). In the present matter, the applicant was born in 1981. Section 301(a)(7) of the former Act, 8 U.S.C. § 1401(a)(7) is therefore applicable to an acquisition of citizenship at birth claim.

Section 301(a)(7) of the former Act states, in pertinent part, that:

The following shall be nationals and 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.

The evidence in the record reflects that the applicant's mother was born in the Philippines on October 25, 1955. In order to determine whether the applicant meets the requirements for citizenship under section 301(a)(7) of the Act, we must therefore first determine whether his mother was a U.S. citizen at the time of the applicant's birth.²

² Because the applicant's mother was born in 1955, section 301(a)(7) of the former Act also applies to her acquisition of U.S. citizenship claim.

An individual born abroad is presumed to be an alien and bears the burden of establishing his or 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 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 individual’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, the individual 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)).

Counsel indicates on appeal that the evidence in the record demonstrates that the applicant’s maternal grandfather entered the United States as a U.S. citizen in 1928, and that the U.S. military determined that the applicant’s maternal grandfather was a U.S. citizen prior to the applicant’s mother’s birth. Counsel submits an April 2, 2012 declaration from the applicant’s mother, stating in pertinent part that her father became a U.S. citizen in 1928; that he was in the United States from 1928 to 1944, and again from 1958 to 1962; and that he was in the U.S. military from 1942 to 1946. She states that her father and family members told her that her father was a U.S. citizen, and that she also knows this from his military records. She indicates further that she applied for a certificate of citizenship in 1987 based on her birth to a U.S. citizen father, but that the application was denied because she did not have naturalization certificate evidence for her father.

The record contains a May 17, 1928 ship manifest prepared for U.S. immigration authorities, listing the names of U.S. citizens and natives of United States insular possessions. The applicant’s maternal grandfather’s name is contained on the list.

A U.S. military reserve classification officer questionnaire, signed by the applicant’s maternal grandfather on December 23, 1942, reflects that he was born in the Philippines in October 1908 to Philippine parents. The applicant’s maternal grandfather states on a U.S. military, “Application for Appointment and Statement of Preferences for Reserve Officer” form, signed December 23, 1942, that he is a U.S. national, and that he is not a U.S. citizen.

A “Military Record and Report of Separation Certificate of Service” prepared by a personnel officer indicating that the applicant’s maternal grandfather was a U.S. citizen.

The record also contains the applicant’s mother’s April 25, 1980, Philippine marriage certificate listing her father as a Filipino national.

Upon review, we find that the applicant has failed to establish, by a preponderance of the evidence, that his maternal grandfather was a naturalized U.S. citizen; that his mother has a U.S. citizen parent; or that his mother acquired U.S. citizenship through a parent at birth.

It is noted that The Act of April 14, 1802, 2 Stat. 153 (1802 Act) and subsequent amendments, provided, in pertinent part, that in order to become a naturalized U.S. citizen, the alien must have

declared “on oath or affirmation, before the supreme, superior, district or circuit court of the United States” his intention to become a citizen of the United States and that he will support the U.S. Constitution, and that he renounces and abjures all allegiance and fidelity to a foreign state or sovereignty.

Similarly, the current Act provides, in pertinent part at section 337(a) of the Act, 8 U.S.C. § 1448(a) that, “a person who has applied for naturalization shall, in order to be and before admitted to citizenship, take in a public ceremony before the Attorney General or a court with jurisdiction under section 310(b)” and take an oath to support the Constitution of the United States, to renounce and abjure all allegiance and fidelity to any state or sovereignty, and to support and defend the Constitution and the laws of the United States against all enemies.

In the present matter, the applicant has not presented certificate of naturalization proof of his maternal grandfather’s naturalization in 1928 or at any other time, and the evidence in the record fails to demonstrate that the applicant’s maternal grandfather became a U.S. citizen. The applicant’s maternal grandfather states in a signed U.S. military document that he is a U.S. national, and that he is not a U.S. citizen. In addition, the ship manifest evidence reflects that the names listed on the 1928 manifest are those of both U.S. citizens, and nationals of U.S. possessions. Furthermore, the assertion that the U.S. military determined that the applicant’s maternal grandfather was a U.S. citizen is unpersuasive, as the U.S. military is not vested with the authority to naturalize U.S. citizens.

The evidence in the record thus fails to establish that the applicant’s mother was born to a naturalized U.S. citizen parent. It is noted further that the applicant’s maternal grandfather did not acquire U.S. citizenship at birth, as “birth in the Philippines during the territorial period does not constitute birth in the United States under the Citizenship Clause of the Fourteenth Amendment, and thus does not give rise to United States citizenship.” *Rabang v. Immigration & Naturalization Service*, 35 F.3d 1449, 1452 (9th Cir. 1994) (quotations and citations omitted). Because the applicant failed to establish that his mother was a U.S. citizen at the time of his birth, section 301(a)(7) provisions do not apply in his case.³

The regulation provides at 8 C.F.R. § 341.2(c) that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. The applicant in this case has not met his burden of proof. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.

³ The evidence submitted contains discrepancies regarding the applicant’s maternal grandfather’s date of birth, indicating in some documents that he was born on October 13, 1908, and in others that he was born October 13, 1907. It is not necessary to reach the issue in this decision since the applicant failed to establish that his maternal grandfather was a U.S. citizen.