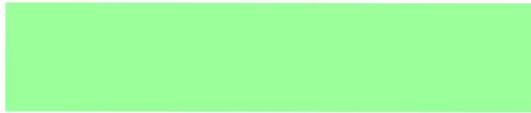




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **OCT 15 2013**

OFFICE: NEW YORK, NY

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,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Form N-600, Application for Certificate of Citizenship (Form N-600) was denied by the District Director, New York, New York (the director), and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant was born to married parents in the Dominican Republic on June 13, 1967. The applicant's father was born in the Dominican Republic on September 4, 1935, and he acquired U.S. citizenship at birth through a U.S. citizen parent. The applicant's mother was born in the Dominican Republic, and she became a naturalized U.S. citizen on October 28, 1994, when the applicant was 27 years old. The applicant was admitted into the United States as a lawful permanent resident on March 7, 1969, when he was 1 years old. He presently 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 he acquired U.S. citizenship at birth through his father.

In a decision dated March 5, 2012, the director determined that the applicant had failed to establish that his father was physically present in the United States for 10 years prior to his birth, at least 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 asserts on appeal that the director did not provide him with a Request for Evidence letter, and that the director's decision was erroneous. The applicant indicates that he has established that he qualifies for U.S. citizenship through his father. He submits no new evidence on appeal. Documentation contained in the record includes birth certificates for the applicant, his father, and his paternal grandmother, and marriage and death certificate information for the applicant's father. 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 1967. Section 301(a)(7) of the former Act therefore applies to his acquisition of citizenship claim.

Under section 301(a)(7) of the former Act provides, in pertinent part, that 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, 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)).

Here, the applicant must establish that his father was physically present in the United States for 10 years prior to the applicant's birth on June 13, 1967, at least five years of which were after his father turned 14 on September 4, 1949. The applicant submits no evidence on appeal to establish his father's U.S. physical presence prior to his birth. Moreover, the Dominican Republic birth certificate evidence contained in the record for the applicant and his father, reflects only the applicant's father's presence in the Dominican Republic at the time of their births. The applicant's father's Dominican Republic marriage certificate evidence similarly reflects only that the applicant's father was present in the Dominican Republic when he married on September 25, 1958. Although the applicant's father's death certificate reflects that his father lived in New York at the time of his death on June 16, 2008, the evidence does not demonstrate that the applicant's father was physically present in the United States prior to the applicant's birth in 1967. In addition, the applicant's Form I-130, Petition to Classify Status of Alien Relative for Issuance of Immigrant Visa (Form I-130), contained in the record, and filed and signed by the applicant's father under oath on February 7, 1968, reflects that the applicant's father stated on the form that he lived in the Dominican Republic from 1955 until the date that the Form I-130 was filed.

Upon review, we find that the applicant has failed to establish, by a preponderance of the evidence, that his father was physically present in the United States for 10 years prior to the applicant's birth on June 13, 1967, at least five years of which were after his father turned 14 on September 4, 1949. 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 meet his burden of proof. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.