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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Avenue, NW, MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

DATE: **OCT 15 2013**

OFFICE: SAN DIEGO, CA

FILE: [REDACTED]

IN RE: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under Section 301 of the former Immigration and Nationality Act, 8 U.S.C. § 1401

ON BEHALF OF APPLICANT:
[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office 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. 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.

Thank you,

A handwritten signature in black ink, appearing to read "R. Rosenberg", written over a large, stylized flourish.

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, San Diego, California (the director), and an appeal was rejected by the Administrative Appeals Office (AAO). The director subsequently dismissed a motion to reopen and reconsider, and the matter is again before the AAO on appeal. The appeal will be dismissed.

The applicant was born in Mexico to married parents on November 13, 1975. The applicant's mother was born in Mexico on March 5, 1948, and she acquired U.S. citizenship at birth through a parent. His father 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 he acquired U.S. citizenship at birth through his mother.

The record reflects that the applicant filed a Form N-600 on September 14, 2007. The Form N-600 was denied on August 19, 2010, and the AAO rejected an appeal of the matter as untimely on November 22, 2011. The applicant subsequently filed another Form N-600 on May 25, 2012. The regulation at 8 C.F.R. § 341.5(e) states that after an application for a certificate of citizenship has been denied and the appeal time has run, a second application submitted by the same individual shall be rejected and the applicant shall be instructed to file a motion to reopen or reconsider the denial of the first application. In this case, the director appears to have treated the applicant's second Form N-600 as a motion to reopen and reconsider.

In a decision dated March 3, 2013, 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, as required by section 301(a)(7) of the former Act. Accordingly, the Form N-600 remained denied.

Through counsel, the applicant asserts on appeal that the evidence in the record establishes that the applicant's mother met section 301(a)(7) of the former Act, U.S. physical presence requirements prior to the applicant's birth. To support the assertions, the record contains birth and U.S. citizenship documentation for the applicant's mother; marriage certificate evidence for the applicant's parents; a pay stub, union dues payment receipts, and Social Security Administration earnings information for the applicant's mother; affidavits from friends and family members; photographs; and U.S. lawful permanent resident status information for the applicant's father. 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). In the present matter, the applicant was born in 1975. Section 301(a)(7) of the former Act therefore applies to his claim for U.S. citizenship.

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

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 prior to the applicant’s birth on November 13, 1975, at least five years of which were after his mother turned 14 on March 5, 1962, the record contains the applicant’s mother’s certificate of citizenship, issued on December 27, 1972, and containing a California residence address. A U.S. citizen identification card issued to the applicant’s mother in California on January 3, 1973, is also contained in the record. In addition, the applicant’s parents’ California State marriage certificate reflects that they resided in [REDACTED] California when they married on July 6, 1973.

Labor union evidence reflects that the applicant’s mother paid union dues in California in 1973 and 1974. U.S. Social Security Administration information reflects that the applicant’s mother earned \$1751.93 in 1974, and \$2113.56 in 1975.

The applicant’s mother asserts in an August 30, 2007, declaration that she resided in Mexico from the time of her birth until 1960, and for three months between March and June 1968. She indicates that she lived in the United States at all other times, and she provides street addresses for California residences in: [REDACTED] from May 1960 to 1963; [REDACTED] from 1963 to March 1968; [REDACTED] from June 1968 to November 1971; [REDACTED] from November 1971 to January 1975; [REDACTED] from January to October 1975; and [REDACTED] from October 1975 to November 1975.

The applicant’s father states, in a letter dated September 10, 2010, that he and the applicant’s mother have lived together in California since 1963, and that proof of their U.S. residence was issued in his, rather than the applicant’s mother’s, name.

The record also contains several letters from friends of the applicant’s mother. [REDACTED] states in an August 9, 2007 letter, that she met the applicant’s mother and family at her work in [REDACTED] California, around 1970, and that the family resided in [REDACTED] California. [REDACTED] states in an August 9, 2007 letter, that she met the applicant’s maternal grandmother

in [REDACTED] California in the 1970s while attending English language classes, and that she met the applicant's mother as well. [REDACTED] states, in a letter dated August 8, 2007, that she has known the applicant's mother for 37 years and that she lives in [REDACTED] California. [REDACTED] indicates in an August 5, 2007 letter, that he spent his life in California, and that he has known the applicant's mother for almost 20 years.

[REDACTED] states in an undated letter that she has known the applicant's mother since 1967, that she was her neighbor when the applicant's mother lived in [REDACTED] California through 1986, and that she and the applicant's mother worked together in various field work jobs in different cities. [REDACTED] state in an undated letter that they know the applicant's mother, that she lived in [REDACTED] in 1972, and that she "traveled to different job sites," but always returned to [REDACTED] California.

[REDACTED] states in a letter dated August 15, 2007, that he has known the applicant's mother "all of [his] life, since [they were] children." He states in a second letter, dated September 6, 2007, that he went to school with the applicant's mother, that they "grew up together until [they] came to the United States to work," that they worked in the fields and resided in [REDACTED] California in 1969, and that they both lived and worked in [REDACTED] California in 1978 and 1979.

[REDACTED] states in an August 8, 2007, letter that the applicant's mother resides in [REDACTED] California, and he has known her for over 44 years. He states in a second, undated letter, that he met the applicant's mother when she was about 16 years old and worked at the [REDACTED] company sewing bags; that the applicant's mother lived in [REDACTED] California and worked in the fields around 1968 to 1970; that she returned to Mexicali "years later;" and that the applicant's mother moved to [REDACTED] California in 1970, and subsequently to [REDACTED] California.

[REDACTED] state in a letter dated July 6, 2007, that they have known the applicant's mother since about 1968; that the applicant's parents lived with them "for a period of time" in [REDACTED] California; and that they worked one season in [REDACTED] California, and "sometime later" relocated to [REDACTED] California. They state in a second letter, dated August 7, 2007, that they have known the applicant's mother for almost 40 years, and that she lived close to their home in [REDACTED] California.

[REDACTED] states in an August 9, 2007, letter that he has known the applicant's mother for almost 30 years, and that she lived in [REDACTED] California. [REDACTED] states in two letters, dated August 6, 2007, that she met the applicant's parents in 1965 in [REDACTED] California "at the packing shed where [she] worked," and that the applicant's mother lived in [REDACTED] California at the time.

The record also contains the applicant's Form N-600, filed on September 14, 2007, indicating that his mother resided in the United States from April 25, 1978 to the present. A second Form N-600, submitted by the applicant on May 25, 2012, states that his mother resided in the United States from the summer of 1960 to the present.

In addition, the record contains a copy of the applicant's mother's U.S. citizenship application, filed by the applicant's mother in October 1972. The applicant's mother states on her application that she arrived in the United States as a "commuter only." She answers "not applicable" to questions about her United States arrival and departure dates, and to questions about whether she has been outside of the United States since her arrival in the United States.

Upon review, the AAO finds that the applicant has failed to establish, by a preponderance of the evidence, that his mother was physically present in the United States for 10 years prior to the applicant's birth on November 13, 1975, at least five years of which were after his mother turned 14 on March 5, 1962, as required under section 301(a)(7) of the former Act. The photograph evidence contained in the record fails to establish that the applicant's mother was physically present in the United States, and Social Security Administration, labor union, and U.S. citizenship evidence establishes, at best, three years of U.S. physical presence prior to the applicant's birth.

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 (Comm. 1989). Here, the affidavits contained in the record have diminished evidentiary weight. The letters lack detail regarding exact dates and places that the applicant's mother lived in the United States, they are uncorroborated by independent evidence, and the record lacks evidence establishing the affiants' residence or employment in the United States during the claimed time periods. In addition, the U.S. physical presence dates contained in the applicant's mother's August 2007 declaration materially conflict with her 1972 citizenship application responses regarding her presence in the United States. The dates in the applicant's mother's citizenship application also conflict materially with dates and places listed by several of the affiants, and with the dates listed by the applicant on his Form N-600s.

The regulation provides at 8 C.F.R. § 341.2(c) 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 his burden of proof. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.