



**U.S. Citizenship  
and Immigration  
Services**

(b)(6)

DATE: **SEP 18 2013** OFFICE: OAKLAND PARK, FL

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,

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, Oakland Park, Florida (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 Mexico on July 1, 1984. She 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 January 24, 2013, the director determined that the applicant's mother was not a U.S. citizen, and that the applicant failed to establish that her father was a U.S. citizen, or that he was physically present in the United States for 10 years prior to the applicant's birth, five years of which were after he turned 14, as required under section 301(a)(7) of the former Act. The application was denied accordingly.

Through counsel, the applicant asserts on appeal that the evidence in the record establishes that her father is a U.S. citizen, and that he met section 301(a)(7) of the former Act, U.S. physical presence requirements prior to the applicant's birth. To support the assertions, counsel submits California driver's license and U.S. Selective Service registration information for the applicant's father. The record also contains birth and marriage certificate evidence, Social Security Administration and union membership information, affidavits, and envelope evidence. 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 1984. Section 301(a)(7) of the former Act therefore applies to her U.S. citizenship claim.<sup>1</sup>

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

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<sup>1</sup> 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 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 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 the applicant’s father’s identity and citizenship, the record contains the applicant’s Mexican birth certificate, reflecting that she was born in Monclova, Mexico on July 1, 1984; that her father is [REDACTED] and that her mother is [REDACTED]. The birth certificate reflects that both of the applicant’s parents have Mexican nationality. The birth certificate states further that the applicant’s paternal grandfather is [REDACTED] and her paternal grandmother is [REDACTED].

The applicant’s parents’ marriage certificate reflects that the applicant’s father, [REDACTED] was 23 when he married [REDACTED] on December 29, 1973, in Ocampo, Mexico. The marriage certificate states that [REDACTED] was born in [REDACTED] Coahuila, Mexico, and that he has Mexican nationality. The marriage certificate states further that [REDACTED] father (the applicant’s paternal grandfather) is [REDACTED] his mother (the applicant’s paternal grandmother) is [REDACTED] and that both parents have Mexican nationality.

A Texas State birth certificate reflects that [REDACTED] was born in San Antonio, Texas on November 19, 1949; that [REDACTED] father is [REDACTED] born in San Antonio, Texas; and that his mother is [REDACTED], born in San Antonio, Texas. U.S. passport and California identity documents for [REDACTED] are also contained in the record.

[REDACTED] states, in pertinent part, in affidavits dated February 21, 2012 and October 11, 2012, that his name is [REDACTED]; that he was born on November 19, 1949; that he is a U.S. citizen by birth; and that the applicant, [REDACTED] is his daughter. He states that he lived in San Antonio, Texas with his family until he was five. He then lived in Mexico with his legal guardians, [REDACTED] and [REDACTED] and he does not remember having contact with his biological family after that. He states further that, “from what [he] was told, [he] was the youngest son of [REDACTED] and [REDACTED] also known as [REDACTED] and [REDACTED].”

Upon review, the AAO finds that the evidence submitted to establish that the applicant’s father is a U.S. citizen has diminished probative value due to numerous material discrepancies. The U.S. birth certificate submitted to establish that the applicant’s father is a U.S. citizen states that [REDACTED] was born on November 19, 1949 to U.S. citizen parents, [REDACTED] and [REDACTED].

however, the applicant's birth certificate reflects that her father's name is [REDACTED]; that her father has Mexican nationality; and that her father's parents are [REDACTED] and [REDACTED], both nationals of Mexico. The applicant's father's marriage certificate also states that his name is [REDACTED] and that his parents are [REDACTED] and [REDACTED] both Mexican nationals. In addition, the marriage certificate states that [REDACTED] was born in Mexico and that he is a national of Mexico, and his age at the time of marriage reflects that he may have been born in 1950, rather than in 1949.

The affidavit evidence contained in the record fails to overcome the material discrepancies contained in the evidence. Although the affiant states that his parents, [REDACTED] and [REDACTED] are also known as, [REDACTED] and [REDACTED], the record contains no independent evidence to corroborate this claim. Moreover, the affiant fails to address or establish why he and his parents are listed as Mexican nationals on his marriage certificate and in the applicant's birth certificate. Accordingly, the applicant has failed to establish that [REDACTED] and U.S. citizen, [REDACTED], are the same person, or that her father is a U.S. citizen.

The AAO finds further that, even if the applicant had established that her father was U.S. citizen, [REDACTED], she failed to establish that [REDACTED] was physically present in the United States for 10 years prior to her birth, at least five years of which were after he turned 14.

To establish [REDACTED] physical presence in the United States between November 19, 1949 and July 1, 1984, the record contains California driver's license exam information, signed by [REDACTED] on March 24, 1969, and containing a Los Angeles, California address. A California driver's license-related Statement of Custody of Minor, signed by [REDACTED], states that she had physical custody over [REDACTED], and contains a Los Angeles, California address; however, the date of signature on the document is illegible. The record also contains evidence reflecting that [REDACTED] registered for the U.S. Selective Service in Los Angeles, California on November 16, 1971. Union membership information reflecting that [REDACTED] belonged to the [REDACTED] in Los Angeles, California from January 26, 1970 to February 1972, and from October 31, 1972 to January 1973, is also contained in the record, as is a copy of an envelope postmarked on March 8, 1970, containing a Los Angeles, California return address for [REDACTED].

Friend, [REDACTED], states, in pertinent part in an affidavit signed on February 20, 2012, that she has known [REDACTED] since she was a little girl, and that he and his mother visited her family in San Antonio, Texas when he was a baby and small boy.

[REDACTED] states, in pertinent part, in affidavits dated February 21, 2012 and October 11, 2012, that he lived in San Antonio, Texas from the time of his birth until 1954, when he was five years old; he lived in Mexico with his legal guardians, [REDACTED] and [REDACTED] from 1954 to 1966, and then moved to Los Angeles, California with the [REDACTED] family in 1966, when he was 16 years old; he subsequently worked, volunteered for a little league softball team, and attended night school at

[redacted] in Los Angeles, California, and lived with the [redacted] family in Los Angeles, California until he married in Mexico on December 29, 1973. He states further that, although he visited the United States for brief periods for employment reasons after 1973, his "main residence" after his marriage in 1973 was in Monclova, Mexico, where he lived from 1973 until 2010.

Social Security Administration evidence reflects, in pertinent part, that [redacted] earned the following income in the United States between 1968 and 1984:

1968 - \$1952.00	1977 - \$2753.00
1969 - \$3988.83	1978 - \$1478.25
1970 - \$6831.74	1979 - \$3053.25
1971 - \$6500.80	1980 - \$3656.25
1972 - \$1811.59	1981 - \$3247.00
1973 - \$688.72	1984 - \$4944.00
1974 - \$222.37	
(no earnings in 1975 and 1976)	(no earnings in 1982 and 1983)

Upon review, the AAO finds that the applicant has failed to establish by a preponderance of the evidence, that [redacted] was physically present in the United States for the requisite time period set forth in 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 (Comm. 1989). In the present matter, the affidavits contained in the record have diminished evidentiary weight, in that the record lacks documentary evidence identifying affiant [redacted], or establishing her residence in the United States during the claimed time periods. Moreover, the statements by [redacted] and the applicant's father are vague, lack specific information regarding the dates and places that the applicant's father lived in the United States, and are uncorroborated by independent documentary evidence. The record contains no documentary evidence to corroborate assertions that the applicant was physically present in the United States between 1949 and 1954, and at best, the documentary evidence contained in the record establishes [redacted] physical presence in the United States for six years prior to the applicant's birth and after his 14<sup>th</sup> birthday (between 1968 and 1973), as [redacted] states that he visited the United States only for brief periods for employment purposes after the year 1973.

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 her burden of establishing that her father is a U.S. citizen or that her father was physically present in the United States for 10 years prior to the applicant's birth, at least five years of which were after her father turned 14, as required by section 301(a)(7) of the former Act. Accordingly, the appeal will be dismissed.

(b)(6)

*NON-PRECEDENT DECISION*

**ORDER:** The appeal is dismissed.