



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: **SEP 25 2013**

OFFICE: HARLINGEN, TX

FILE: [Redacted]

IN RE:

[Redacted]

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:

[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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The applicant was born in Mexico on January 21, 1978 to married parents. The applicant's father, now deceased, was born in Mexico on August 6, 1934, and acquired U.S. citizenship at birth through a parent. The applicant's mother was born in Mexico and is not a U.S. citizen. The applicant 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 February 12, 2013, the director determined that the applicant had failed to meet his burden of establishing that his father was physically present in the United States for 10 years prior to his birth, 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.

Through counsel, the applicant asserts on appeal that the evidence in the record credibly establishes that his father was physically present in the United States for the time periods specified in section 301 of the former Act. In support of the assertions, counsel submits Social Security earnings information; affidavits from family members; certificate of citizenship information for the applicant's father and family members; and resident citizen card evidence for the applicant's father.

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.

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). The applicant was born in Mexico on January 21, 1978. Section 301(a)(7) of the former Act therefore applies to his citizenship claim.¹

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

¹ 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, 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 father was physically present in the United States for 10 years prior to the applicant’s birth on January 21, 1978, at least five years of which were after his father turned 14 on August 6, 1948, the record contains a resident citizen card issued to the applicant’s father in Hidalgo, Texas on February 20, 1970, stating that the applicant’s father is entitled to be, and remain, in the United States.

Social Security Administration evidence reflects the following U.S. earning history for the applicant’s father between 1968 and 1978:

1968 - \$871.00			
1969 - \$230.00	1974 - \$416.00	1970 - \$292.00	1975 - \$0
1971 - \$0	1976 - \$533.00		
1972 - \$646.00	1977 - \$1097.00		
1973 - \$536.00	1978 - \$2270.00		

The record also contains an affidavit signed by the applicant’s father on January 24, 2003, stating, in pertinent part, that he moved to Mercedes Texas to work and live in November 1967; he always worked in the fields with [redacted] and with [redacted] he visited family in Mexico every one to two weeks for the weekend; and he lived at the following addresses in Mercedes, Texas: 1967-1968 at [redacted]; 1968-1975 at [redacted]; 1975-1991 at [redacted]

The applicant’s paternal uncle, [redacted] states in pertinent part, in an affidavit signed January 24, 2003, that in November 1967, he and the applicant’s father came to the United States to gain U.S. citizenship, and to work and live. He states that they did not leave the United States after that date, except to visit family in Mexico every week or two for the weekend; they worked in the fields for [redacted] and that he and the applicant’s father lived together in Mercedes, Texas at [redacted] from 1967 to 1968, and at [redacted] from 1968 to 1975. The applicant’s father then moved to [redacted] until 1991.

The applicant’s father’s cousin, [redacted] states, in pertinent part, in an affidavit signed on January 24, 2003, that the applicant’s father and his brother, [redacted] lived at her house “for about a year from 1967 to 1968;” and that they worked in the fields with her father. She states that

the applicant's father visited his family in Mexico every week or two on the weekends, and that he lived in Mercedes, Texas from 1967 through 1991.

The applicant's mother states in affidavits dated July 19, 2011 and December 7, 2012, that the applicant's father moved to Mercedes, Texas in November 1967; he lived with his cousin, [REDACTED] Mercedes, Texas; and that he lived with [REDACTED] "continuously from the date of his entry to the United States in 1967 to the year 1991." She states that the applicant's father returned to Mexico "about every 2 weeks" to visit the family for the weekend until 1993, when the family moved to the United States; and that although he did not always report his income, the applicant's father "always worked in the United States."

Statements contained on the Application for Certificate of Citizenship, signed by the applicant's father on November 15, 1967, filed on November 22, 1967, and sworn to by the applicant's father before an immigration officer on May 8, 1968, reflect that the applicant's father was born in "R. La Mesa, Tamps., Mexico," that his address was, "[REDACTED] Tamps, Mexico," and that he arrived in the United States at Hidalgo, Texas on November 14, 1967. The Certificate of Citizenship issued to, and signed by, the applicant's father on May 31, 1968 also states that the applicant's father resides at [REDACTED] Tamps., Mexico."

The record additionally contains copies of certificates of citizenship issued to four of the applicant's siblings, born in Mexico between 1980 and 1989. Copies of lawful permanent resident cards issued to the applicant and five siblings born in Mexico between 1965 and 1979 are also contained in the record.

Counsel indicates that the certificates of citizenship issued to several of the applicant's younger siblings establish that the applicant's father meets U.S. physical presence requirements in the applicant's case. The AAO notes that only lawful permanent resident status evidence is submitted for the siblings born before, and immediately following, the applicant's birth. Moreover, it must be emphasized that each petition filing is a separate proceeding with a separate record. See 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, U.S. Citizenship and Immigration Services (USCIS) is limited to the information contained in that individual record of proceeding. See 8 C.F.R. § 103.2(b)(16)(ii).

Upon review, the AAO finds 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 January 21, 1978, at least five years of which were after his father turned 14 on August 6, 1948.

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. The record lacks documentary evidence to identify [REDACTED] or to corroborate assertions that she lived in Mercedes, Texas during the claimed time periods. Moreover, [REDACTED] statement that the applicant's father and his brother lived with

her from 1967 to 1968 is materially inconsistent with the applicant's mother's statement that the applicant's father lived continuously with [REDACTED] from November 1967 to 1991. Neither the applicant's father nor his paternal uncle indicates that they lived with their cousin, [REDACTED] in Mercedes, Texas. Moreover, the U.S. address listed by the applicant's mother, and the U.S. addresses listed by the applicant's father and paternal uncle are materially inconsistent. The record contains no documentary evidence to corroborate claims that the applicant's father lived in Mercedes, Texas. Furthermore, Mexican residence statements contained in the applicant's father's U.S. citizenship application, and on his Certificate of Citizenship contradict claims that he lived in the United States during that period.

The evidence in the record also fails to establish that the applicant's father was continuously employed in the United States from November 1967 onwards. Although Social Security Administration evidence reflects that the applicant's father earned income in the United States between 1968 and 1978, the income is limited and varies from year to year, and the evidence fails to establish the dates that the applicant's father worked, where he worked, or that he lived in the United States during the periods that he earned income in the United States.

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. In the present matter, 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 his birth, at least five years of which were after his father turned 14, as required by section 301(a)(7) of the former Act. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.