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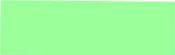
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



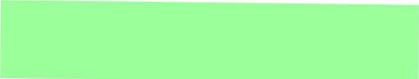
U.S. Citizenship  
and Immigration  
Services



Date: **APR 08 2014** Office: SAN DIEGO, CALIFORNIA

FILE: 

IN RE:

Applicant: 

APPLICATION: Application for Certificate of Citizenship under former section 301 of the Immigration and Nationality Act; 8 U.S.C. § 1401 (1969)

ON BEHALF OF APPLICANT:



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 Director of the San Diego, California Field Office (the director) denied the Application for Certificate of Citizenship (Form N-600) and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the application will remain denied.

*Pertinent Facts and Procedural History*

The applicant was born in Mexico on October 12, 1969 to married parents, who are listed on his birth certificate as [REDACTED] and [REDACTED]. The applicant claims that his father was born in Arizona on December 24, 1937 and was a U.S. citizen at the time of his birth. There is no evidence that the applicant's mother was 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 Act), 8 U.S.C. § 1401(a)(7), based on the claim that he acquired U.S. citizenship at birth through his father.

The director found that the applicant failed to establish that his father: (1) was born in the United States; and (2) was physically present in the United States for the requisite period prior to the applicant's birth, as required by former section 301(a)(7) of the Act. The application was denied accordingly. On appeal, the applicant claims through counsel that the evidence is sufficient to show that his father was born in Arizona and that he met the physical presence requirements.

*Applicable Law*

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). The applicant in this case was born in 1969. Accordingly, former section 301(a)(7) of the Act controls his claim to acquired citizenship.<sup>1</sup>

Former section 301(a)(7) of the Act stated 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. . . .

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<sup>1</sup> Former section 301(a)(7) of the 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.

The applicant bears the burden of proof to establish the claimed citizenship by a preponderance of the evidence. Section 341 of the Act, 8 U.S.C. § 1452; 8 C.F.R. § 341.2(c). The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). In evaluating the evidence, *Matter of E-M-* also stated that "[t]ruth is to be determined not by the quantity of evidence alone but by its quality." *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, U.S. Citizenship and Immigration Services (USCIS) must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if USCIS has some doubt as to the truth, if the applicant submits relevant, probative, and credible evidence that leads the agency to believe that the claim is "probably true" or "more likely than not," the applicant has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (defining "more likely than not" as a greater than 50 percent probability of something occurring). If USCIS can articulate a material doubt that leads it to believe that the claim is probably not true, then USCIS may deny the application. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

Strict compliance with statutory prerequisites is required to acquire citizenship. *See Fedorenko v. U.S.*, 449 U.S. 490, 506 (1981).

#### *The Applicant's Father's Identity*

To demonstrate that his father was born on December 24, 1937 in the State of Arizona, the applicant submitted a birth certificate of a child named [REDACTED] born to parents [REDACTED] and [REDACTED]. The applicant claims that [REDACTED] and his father, [REDACTED] are the same person. According to counsel, the hospital recorded the applicant's father and his grandfather's names incorrectly on the applicant's father's birth certificate and that no birth certificate exists for a [REDACTED] born in Arizona on December 24, 1937. Counsel states that evidence of [REDACTED] and [REDACTED] being the same person consists of: (1) the name of the applicant's father's mother, [REDACTED] appearing on the applicant's birth certificate as the paternal grandmother and the applicant's parents' marriage certificate as the mother of the groom; (2) affidavits of the applicant's siblings, each of whom describes the "family history" that the applicant's father and grandfather's names were recorded incorrectly on the applicant's father's birth certificate; (3) affidavits from the applicant's uncle written in the Spanish language, without an English translation<sup>2</sup>; (4) an Extract of Records from the Social Security Administration (SSA); (5) the applicant's father's death certificate; and (6) a declaration from Private Investigator, [REDACTED].

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<sup>2</sup> Any document containing foreign language must be accompanied by a full English translation. 8 C.F.R. § 103.2(b)(3). Although counsel noted that the uncle's affidavit was accompanied by an English translation, no such translation is contained in the record. The record contains two copies of the uncle's affidavit written in the Spanish language.

Depending on the specificity, detail, and credibility of an affidavit, letter or statement, USCIS may give the document more or less persuasive weight in a proceeding. The Board of Immigration Appeals (the Board) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the affected party to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

The applicant has not established by a preponderance of the evidence and [REDACTED] and [REDACTED] are the same person. The affidavits written by the applicant's siblings are deficient because they provide only the "family history" of the applicant's father's birth. None of them were present at the applicant's father's birth and, therefore, they do not have direct personal knowledge of the applicant's father's birth and its circumstances. *See* 8 C.F.R. § 103.2(b)(2). The applicant's uncle's affidavit is not accompanied by an English translation and, therefore, cannot be considered. Thus, taken together, the affidavits have little probative value in demonstrating that [REDACTED] and [REDACTED] are the same person. More importantly, counsel's assertions regarding the probative value of the name [REDACTED] appearing on the applicant's birth certificate and his parents' marriage certificate are diminished in light of the documentary evidence of record.

As affirmed in his declaration, the Private Investigator, [REDACTED] states: "I have not yet been able to definitely provide by government records that [the applicant's father] was born in the United States . . . ." The birth certificate of [REDACTED] lists the date of birth as December 24, 1937; however, the copy of the applicant's father's California Identification Card and his death certificate lists his date of birth as December 25, 1937. Neither counsel nor the applicant has explained why the applicant's father would claim a December 25, 1937 date of birth. In addition, the birth certificate of the applicant's sister, [REDACTED] lists her date of birth as December 28, 1964 and her father, [REDACTED] as being 28 years old. However, with a date of birth of December 24, 1937, the applicant's father would have just turned 27 years old on December 28, 1964.

In addition, the Extract from Records issued by the SSA refers to [REDACTED] and the applicant's father's California Identification Card lists his name as [REDACTED]. The names [REDACTED] and [REDACTED] do not match the name on the applicant's birth certificate [REDACTED], and the death certificate lists the applicant's father's name as "[REDACTED] with no middle name, not [REDACTED]". Furthermore, the death certificate does not list the state or foreign country of the deceased's birth.

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The applicant has not submitted relevant, probative and credible evidence that his father he is the same [REDACTED] who was born on December 24, 1937 in Arizona. For that reason alone, this Form N-600 is not approvable. However, even if he were able

to establish that his father was a U.S. citizen at the time of his birth, he has failed to demonstrate that his father had the required years of physical presence to transmit U.S. citizenship to him.

*The Applicant's Father's Physical Presence in the United States*

The applicant must establish, by a preponderance of the evidence, that his father was physically present in the United States for no less than ten years before the applicant's birth on October 12, 1969, and that at least five of these years were after his father's fourteenth birthday on December 24, 1951. On the Form N-600, the applicant claimed that his father resided in the United States from the time of his father's birth in 1937 until 1969; the applicant was born in Mexico in October 1969. According to Private Investigator [REDACTED] the applicant's father was issued a social security number in the State of California sometime during the 1954-1955 years. Mr. [REDACTED] however, stated that he had "not yet been able to definitely prove by government records . . . nor from persons nor records the continuous periods of time that the [applicant's father] lived in the United States." The applicant's three siblings' birth certificates indicate that they were all born in California (1964, 1966 and 1967), and they stated in their affidavits that "everyone understood" when they were growing up that their father had never lived in Mexico until moving the family there in 1969 before the applicant's birth. The Extract of Records from the SSA for [REDACTED] indicates, in relevant part, that he received payments from the Social Security Retirement Insurance Benefits and Supplement Security Income in 2003.

The applicant has failed to establish by a preponderance of the evidence that his father was physically present in the United States for ten years before the applicant's birth in 1969. First, the affidavits submitted by the applicant's siblings are based on their "understanding" of family history and, accordingly, do not establish the applicant's father's physical presence in the United States. The applicant's siblings' birth certificates list the applicant's father's residence as California, but these certificates does not establish ten years of physical presence in the United States for the applicant's father. Second and finally, the applicant has submitted no documentary evidence of his father's physical presence in the United States, despite his father's claimed residence in California for 32 years prior to the applicant's birth. Such evidence may include, but is not limited to, lease agreements, wage and earnings statements, Internal Revenue (IRS) statements, and affidavits from individuals who can attest to personal and direct knowledge of the applicant's father's physical presence. The SSA evidence only shows that the applicant's father received payments in 2003, but the applicant has not obtained a record of his father's earnings in the United States for the years that he claims his father was physically present in this country prior to the applicant's birth. Consequently, the applicant has failed to meet his burden of proof in this regard.

*Conclusion*

The applicant has failed to meet his burden of proof to establish the claimed citizenship by a preponderance of the evidence. Accordingly, his appeal must be dismissed.

**ORDER:** The appeal is dismissed. The application remains denied.