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

(b)(6)

[redacted]

DATE: APR 10 2014 OFFICE: HARLINGEN, TX [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 (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 Director of the Harlingen, Texas 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.

Pertinent Facts and Procedural History

The applicant was born in wedlock in Mexico on January 19, 1977. The applicant's father was born in Mexico on June 11, 1950, and derived U.S. citizenship at birth through his parents. The applicant's mother was born in Mexico and became a naturalized U.S. citizen on November 5, 2004, when the applicant was 27 years old. 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.

In a decision dated August 22, 2013, 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 the applicant's birth, five years of which were after the applicant's father turned 14 years old, as required by former section 301(a)(7) of the Act. The applicant therefore failed to satisfy the requirements for acquisition of U.S. citizenship. The Form N-600 was denied accordingly

Through counsel, the applicant asserts on appeal that the cumulative evidence in the record establishes that his father met the U.S. physical presence requirements contained in former section 301(a)(7) of the Act, prior to the applicant's birth.

Applicable Law

The AAO reviews these proceedings *de novo*. *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. *See Chau v. Immigration and Naturalization Service,* 247 F.3d 1026, 1028 n.3 (9th Cir. 2001) (internal citation omitted). The applicant was born in 1977. Former section 301(a)(7) of the Act therefore applies to his U.S. citizenship claim.[1]

Former section 301(a)(7) of the Act provided that the following shall be citizens of the United States at birth:

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[1] 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) of the Act remained the same after the re-designation and until 1986.

> [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

To establish that his father was physically present in the United States for 10 years before the applicant's birth on January 19, 1977, at least five years of which were after his father turned 14 on June 11, 1964, the applicant submits affidavits and letters from his father and several family members, and a letter from the U.S. Census Bureau. The record also contains a copy of the applicant's immigration court removal proceedings transcript containing sworn testimony from the applicant's father, mother, and paternal grandmother. In addition, an immigration judge decision contained in the record reflects that on April 18, 2007, removal proceedings were terminated against the applicant because the Service failed to establish by clear and convincing evidence that the applicant was an alien.

U.S. Citizenship and Immigration Services (USCIS) is not bound by a determination of the Executive Office for Immigration Review (EOIR) that the applicant is a U.S. citizen. An immigration judge may credit an individual's citizenship claim in the course of terminating removal proceedings for lack of jurisdiction because the government has not established the individual's alienage by clear and convincing evidence. *See* 8 C.F.R. § 1240.8(a) and (c) (prescribing that the government bears the burden of proof to establish alienage and removability or deportability by clear and convincing evidence). While the government bears the burden of proof to establish an individual's alienage in removal proceedings before EOIR, in certificate of citizenship proceedings before USCIS, the applicant bears the burden of proof to establish the claimed citizenship by a preponderance of the evidence. Section 341(a) of the Act, 8 U.S.C. § 1452(a); 8 C.F.R. § 341.2(c). USCIS retains sole jurisdiction to issue a certificate of citizenship and the agency's decision is reviewable only by the federal courts, not EOIR. Sections 341(a) and 360 of the Act, 8 U.S.C. §§ 1452(a), 1503.

The applicant's father states, in pertinent part, in an affidavit dated March 15, 2005, that he has lived in the United States since 1959, and that he came to the United States with his parents when he was nine years old; he worked in the fields and lived at [redacted] from 1959 until 1964; and he worked for [redacted] from 1965 until 1984. He states that he visited relatives in Mexico every three to four months before he married his wife in 1970, and that after his marriage he visited Mexico every two months for the weekend.

Affidavits from the applicant's paternal grandmother and his paternal grandfather's sister state, in pertinent part, their knowledge that the applicant's father lived in Mexico until he was eight or nine years old; that the applicant's father lived and worked at the [redacted] from the age of nine until 1964; and that the applicant's father worked with [redacted] in [redacted] Texas from 1965 to 1985. *See Affidavits from [redacted] dated February 3, 2007, and [redacted] dated June 22, 2005.* An affidavit from the applicant's mother states that the applicant's father lived in her neighborhood in Mexico until he was about eight

years old; he visited Mexico about once every three to four months after that; they began dating around 1967, and married in July 1970; and that after their marriage she visited him in or Texas every 15 days, and he visited her in Mexico every two months until she immigrated to the United States in 1982. *See Affidavit from dated June 20, 2005.*[2]

The applicant's paternal grandfather's brother claims, in pertinent part, his personal knowledge that the applicant's father lived in Mexico until he was nine years old, and then lived and worked at the until 1964. *See Affidavit from dated April 7, 2005.* The applicant's paternal grandfather's sister, states in an affidavit dated April 7, 2005, that she remembers that the applicant's father moved to the United States at the age of nine; and that she often visited the applicant's father's family home in Mexico after that, but he no longer lived there.

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'r. 1989). In the present case, the affidavits contained in the record are uncorroborated by documentary evidence of the applicant's father's, or any of the affiants', residence or employment in the United States prior to the applicant's birth in January 1977.

Although the record contains a May 21, 2008 letter from the U.S. Census Bureau, the letter states that there is no 1960 U.S. Census record for the applicant's father for the requested address in Texas. The applicant's younger sister additionally indicates in a letter, dated August 18, 2009, that she and her father attempted to find Texas; however, no one remembered the , and they were unable to locate any record of the Ranch. She indicates further that they heard from people in town that had died; however no evidence of his death, or association with the applicant's father is in the record. *See August 18, 2009 letter from* Furthermore, the affidavits in the record have diminished evidentiary weight in that they are materially inconsistent with certificate of citizenship and immigrant visa application information contained in the applicant's father's immigration file. The applicant's father's U.S. immigration file contains a Form N-600 completed and signed by the applicant's father on March 7, 1997. The applicant's father states on the Form N-600 that he arrived in the United States at Hidalgo, Texas on June 27, 1983. He lists no prior dates of physical presence in the United States. Moreover, the applicant's father states on an Application for Immigrant Visa and Alien Registration, signed by the applicant's father on June

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[2] Immigration court transcript evidence contained in the record contains testimony by the applicant's father, mother and paternal grandmother regarding the applicant's father's U.S. physical presence prior to the applicant's birth. The testimony does not differ significantly from the statements contained in the affidavits discussed above. *See Applicant's Removal Proceedings Transcript, dated April 18, 2007.*

21, 1983, that he resided at Mexico from 1966 to 1981, and that he "periodically" resided in , Texas from 1981 to the present.

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 establish by a preponderance of the evidence that his father was physically present in the United States for the requisite time period set forth in former section 301(a)(7) of the Act. Strict compliance with statutory prerequisites is required to acquire citizenship. *See Fedorenko v. U.S.,* 449 U.S. 490, 506 (1981). Where, as here, the applicant has failed to establish statutory eligibility for U.S. citizenship, a certificate of citizenship cannot be issued. Accordingly, the appeal will be dismissed.

Conclusion

The applicant has not met the requirements of former section 301(a)(7) of the Act, or any other provision of law. It is the applicant's burden to establish eligibility for the immigration benefit sought. *See* Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 341.2(c). Here, that burden has not been met.

ORDER: The appeal is dismissed.