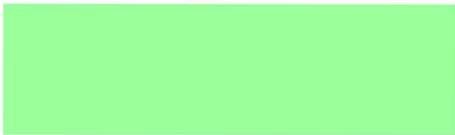


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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals  
20 Massachusetts Avenue, NW, MS 2090  
Washington, DC 20529-2090

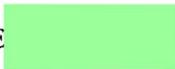


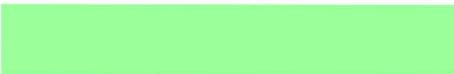
U.S. Citizenship  
and Immigration  
Services



DATE: **APR 16 2014**

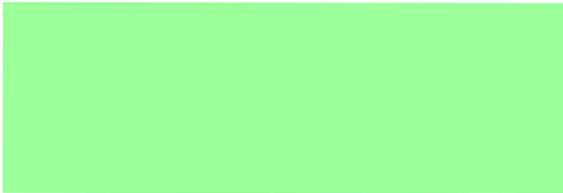
OFFICE: HARLINGEN, TX

FILE 

IN RE: 

APPLICATION: Application for Certificate of Citizenship under former sections 301 and 320 of the Immigration and Nationality Act, 8 U.S.C. §§ 1401 and 1431

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,

  
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 Mexico on May 20, 1957. He was admitted into the United States as a lawful Permanent Resident on June 30, 1971, when he was 14 years old. The applicant's father was born in the United States on October 14, 1930, and he is a U.S. citizen. The applicant's mother was born in Mexico. She became a U.S. lawful permanent resident on June 30, 1971; however, she 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 Act), 8 U.S.C. § 1401(a)(7), based on the claim that he acquired U.S. citizenship at birth through his father. The applicant also asserts a claim to derivative U.S. citizenship through his father pursuant to former section 320 of the Act, and pursuant to section 320 of the Act, as amended; 8 U.S.C. § 1431.

In a decision dated August 5, 2013, the director determined that the applicant failed to establish that his U.S. citizen 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 director determined further that the applicant did not qualify for citizenship under former sections 320 and 321 of the Act, 8 U.S.C. § 1432, or under section 320 of the Act, as amended. The Form N-600 was denied accordingly.

Through counsel, the applicant asserts on appeal that he meets the requirements for U.S. citizenship under former section 301 of the Act, and under section 320 of the former and amended Acts.

*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 (9<sup>th</sup> 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.<sup>1</sup>

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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.

Under former section 301(a)(7) of the 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

To establish that his father was physically present in the United States for 10 years prior to the applicant's birth on May 20, 1957, at least five years of which were after his father turned 14, on October 14, 1944, the applicant submits his father's birth certificate establishing that his father was born in Texas. The applicant also submits an affidavit, dated August 11, 2013, in which his father states that he was born in 1930 in [REDACTED] [sic], Texas; that he lived in [REDACTED] Texas from 1931 to 1941 (at [REDACTED]); and that he lived in [REDACTED] Texas from 1941 to 2001 (at [REDACTED]).<sup>2</sup>

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 affidavit contained in the record is uncorroborated by documentary evidence of the applicant's father's presence in the United States after his birth in 1930, and prior to the applicant's birth in January 1957. Furthermore, the affidavit has diminished evidentiary weight in that it is materially inconsistent with Form I-130, Petition to Classify Status of Alien Relative for Issuance of Immigrant Visa (Form I-130) information contained in the record for the applicant's mother, and signed under oath or affirmation and filed by the applicant's father on March 17, 1971. Specifically, the applicant's father responded to the Form I-130 question asking for the last address that he and his wife resided together, by stating that they lived at [REDACTED] from 1952 to the date that they filed the petition (March 17, 1971). This conflicts directly with the applicant's father's affidavit claim that he lived in the [REDACTED] Texas during those time periods. It is incumbent upon the applicant 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 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. The applicant has failed to establish by a preponderance of the evidence that his father was physically present in the

<sup>2</sup> Additional evidence submitted by the applicant is either undated (his father's Social Security Card), or is dated after the applicant's birth (his father's 1978 Texas operator's license). Photograph evidence does not demonstrate when or where the photographs were taken, or who is in the photographs.

United States for 10 years prior to the applicant's birth on May 20, 1957, at least five years of which were after his father turned 14, on October 14, 1944.

The applicant also failed to establish that he derived U.S. citizenship through his father pursuant to former section 320 of the Act. Former section 320 of the Act provided, in pertinent part, that:

(a) A child born outside of the United States, one of whose parents at the time of the child's birth was an alien and the other of whose parents then was and never thereafter ceased to be a citizen of the United States, shall, if such parent is naturalized, become a citizen of the United States, when:

- (1) Such naturalization takes place while such child is under the age of 18 years; and
- (2) Such child is residing in the United States pursuant to a lawful admission for permanent residence at the time of naturalization or thereafter and begins to reside permanently in the United States while under the age of 18 years.

The applicant's father did not become a U.S. citizen through naturalization. Former section 320 of the Act is therefore not applicable to the applicant's case.

Former section 320 of the Act was amended by the Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631 (CCA), and took effect on February 27, 2001.<sup>3</sup> The provisions of the CCA are not retroactive and section 320 of the Act, as amended, applies only to persons who were not yet 18 years old as of February 27, 2001. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). The applicant was 43 years old on February 27, 2001. Section 320 of the Act, as amended, therefore does not apply to his case.

It is noted that the CCA repealed former section 321 of the Act; nevertheless, all persons who acquired citizenship automatically under section 321 of the former Act, as previously in force

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<sup>3</sup> Section 320 of the Act provides, in pertinent part, that:

- (a) A child born outside of the United States automatically becomes a citizen of the United States when all of the following conditions have been fulfilled:
- (1) At least one parent of the child is a citizen of the United States, whether by birth or naturalization.
  - (2) The child is under the age of eighteen years.
  - (3) The child is residing in the United States in the legal and physical custody of the citizen parent pursuant to a lawful admission for permanent residence.

prior to February 27, 2001, may apply for a certificate of citizenship at any time. *Matter of Rodriguez-Tejedor, supra.*

Former section 321 of the Act provided, in pertinent part, that:

(a) A child born outside of the United States of alien parents, or of an alien parent and a citizen parent who has subsequently lost citizenship of the United States, becomes a citizen of the United States upon fulfillment of the following conditions:

(1) The naturalization of both parents; or

(2) The naturalization of the surviving parent if one of the parents is deceased; or

(3) The naturalization of the parent having legal custody of the child when there has been a legal separation of the parents or the naturalization of the mother if the child was born out of wedlock and the paternity of the child has not been established by legitimation; and if-

(4) Such naturalization takes place while said child is under the age of 18 years; and

(5) Such child is residing in the United States pursuant to a lawful admission for permanent residence at the time of the naturalization of the parent last naturalized under clause (2) or (3) of this subsection, or thereafter begins to reside permanently in the United States while under the age of 18 years.

Neither of the applicant's parents are naturalized U.S. citizens. Former section 321 of the Act is therefore not applicable to the applicant's case.

### *Conclusion*

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. The appeal will therefore be dismissed.

**ORDER:** The appeal is dismissed.