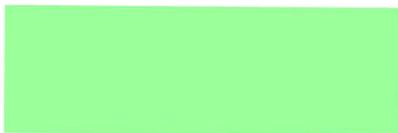




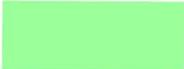
U.S. Citizenship
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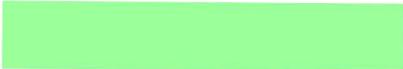


Date: **APR 23 2014**

Office: PHOENIX, AZ

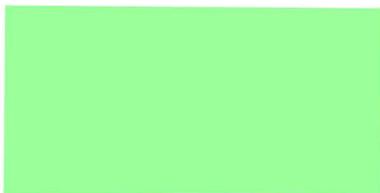
FILE: 

IN RE:

Applicant: 

APPLICATION: Application for Certificate of Citizenship under former Sections 301 and 309 of the Immigration and Nationality Act; 8 U.S.C. §§ 1401 and 1409.

ON BEHALF OF APPLICANT:

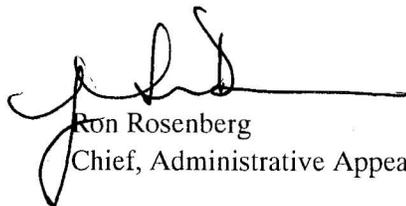


INSTRUCTIONS:

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 Phoenix, Arizona 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 the Mexico on September 16, 1956. The applicant was born out of wedlock to [REDACTED] and [REDACTED]. The applicant's father was born in Texas on January 10, 1936. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship at birth through his father.

The director found that the applicant did not acquire U.S. citizenship at birth because he could not establish that his father was physically present in the United States for ten years prior to the applicant's birth. *See Director's Decision*, dated August 28, 2013.

On appeal, the applicant, through counsel, maintains that his father resided in the United States starting in 1946, returning to Mexico only to visit his family. *See Statement in Support of Appeal*. The applicant submits an additional sworn statement by his father's childhood friend attesting to his father's residence in the United States.

Applicable Law

The AAO reviews these proceedings *de novo*. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). 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).

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 in the present matter was born in 1956. Former section 301(a)(7) of the Act, 8 U.S.C. § 1401(a)(7), is applicable to his case.

Former section 301(a)(7) of the Act stated, in pertinent part, 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 and its outlying possessions 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 or its outlying possessions for a period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years: *Provided*, That any periods of honorable service in the Armed Forces of the United States by such citizen parent may be included in computing the physical presence requirements of this paragraph.

The record reflects that the applicant was born out of wedlock. Former section 301(a)(7) of the act, *supra*, is applicable to children born out of wedlock only upon proof of legitimation prior to the age of 21. See Former section 309(a) of the Act, 8 U.S.C. § 1409(a), as in effect prior to 1986.¹ The applicant was legitimated in accordance with Article 416 of the 1967 Civil Code of Guanajuato when he was ten years old because his father had acknowledged him on his birth certificate. See *Matter of Moraga*, 23, I&M Dec. 195, 199 (BIA 2001)(en banc)(explaining that a change in a country's legitimation laws must take place prior to the child reaching the age required for legitimation in order for the child to benefit under the changed laws). The applicant's parents were married in 1996.

Analysis

At issue in this case is whether the applicant can establish that his father was physically present in the United States as is statutorily required. The applicant claims that his father resided in the United States starting in 1946 when he was 10 years old, and only visited Mexico to see family and friends. The record, however, does not support the applicant's claim.

Depending on the specificity, detail, and credibility of a 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 Board of Immigration Appeals held in *Matter of Tijerina-Villarreal*, 13 I&N Dec. 327, 331 (BIA 1969), that:

[W]here a claim of derivative citizenship has reasonable support, it cannot be rejected arbitrarily. However, when good reasons appear for rejecting such a claim such as the interest of witnesses and important discrepancies, then the special inquiry officer need not accept the evidence proffered by the claimant. (Citations omitted.)

The sworn statements submitted by the applicant lack specificity, detail or credibility. As noted by the director, the statements signed by the applicant's siblings lack probative value because

¹Amendments made to the Act in 1986 included a new section 309(a) applicable to persons who had not attained 18 years of age as of the November 14, 1986 date of the enactment of the Immigration and Nationality Act Amendments of 1986, Pub. L. No. 99-653, 100 Stat. 3655 (INAA). The amendments further provided, however, that former section 309(a) applied to any individual with respect to whom paternity had been established by legitimation prior to November 14, 1986. See section 13 of the INAA, *supra*. See also section 8(r) of the Immigration Technical Corrections Act of 1988, Pub. L. No. 100-525, 102 Stat. 2609.

they were young children born in 1953 and 1951, respectively. The sworn statement submitted on appeal is signed by the applicant's father's childhood friend, a life-long resident of Mexico. Although the applicant's father's friend states that the applicant's father was employed and resided in the United States between 1946 and 1956, he has no probative knowledge of the applicant's father's places and dates of employment or residence. Moreover, the record indicates that the applicant's older siblings were born in Mexico in 1953 and 1951, suggesting that the applicant's father spent a more significant amount of time in Mexico during the relevant ten year period than claimed. Lastly, the applicant's parents' statements state that the applicant's father traveled to Mexico at least "once or twice a year," and stayed "for a few weeks" between 1946 and 1956. Thus, the applicant cannot establish that it is more likely than not that his father was physically present in the United States for a period or periods totaling not less than ten years prior to the applicant's date of birth, at least five of which were after the applicant's father turned 14 on January 10, 1950.

Conclusion

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. The application remains denied.