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

(b)(6)

Date: AUG 0 6 2014 Office: EL PASO, TX 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 El Paso, 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 out of wedlock to in Mexico on June 3, 2003. The applicant's father was born in the United States on March 19, 1984. The applicant's parents were married on September 28, 2004. 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 five years prior to the applicant's birth, two of which were after the age of fourteen. *See Director's Decision*, dated October 11, 2013.

On appeal, the applicant, through counsel, submits statements signed by his father and paternal aunt, attesting to the applicant's father's residence in the United States, the applicant's father's incarceration record, and copies of tax documents.

Applicable Law

We review 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 2003. Section 301(g) of the Act, 8 U.S.C. § 1401(g), is applicable to his case and states, 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 five years, at least two of which were after attaining the age of fourteen years . . . .

The record reflects that the applicant was born out of wedlock. Section 301(g) of the act, *supra*, is applicable to children born out of wedlock only upon fulfillment of the requirements set forth in section 309(a) of the Act, 8 U.S.C. § 1409(a), as amended.

Section 309(a) of the Act states, in relevant part:

> (a) The provisions of paragraphs (c), (d), (e), and (g) of section 301 . . . shall apply as of the date of birth to a person born out of wedlock if-
>
> (1) a blood relationship between the person and the father is established by clear and convincing evidence,
> (2) the father had the nationality of the United States at the time of the person's birth,
> (3) the father (unless deceased) has agreed in writing to provide financial support for the person until the person reaches the age of 18 years, and
> (4) while the person is under the age of 18 years-
> (A) the person is legitimated under the law of the person's residence or domicile,
> (B) the father acknowledges paternity of the person in writing under oath, or
> (C) the paternity of the person is established by adjudication of a competent court.

Analysis

At the outset, we must determine whether the applicant has fulfilled the requirements set forth in section 309(a) of the Act. The applicant was born in the State of Chihuahua, Mexico on June 4, His parents were married on September 28, 2004. The applicant's father's name appears on the applicant's birth certificate. The applicant was therefore legitimated and acknowledged in accordance with the laws of the State of Chihuahua. The record contains DNA test results establishing by clear and convincing evidence the biological relationship between the applicant and his father. The applicant's father is a native born U.S. citizen. The applicant's father has agreed in writing to provide for the applicant's financial support. Thus, the applicant has fulfilled the requirements of section 309(a) of the Act.

The question remains whether the applicant can establish that his father was physically present in the United States for five years prior to the applicant's birth in 2003, two of which were after the applicant's father turned 14 (after 1998).

Depending on the specificity, detail, and credibility of a letter or statement, U.S. Citizenship and Immigration Services (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 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 record contains a statement signed by the applicant's father indicating that he moved to Denver, Colorado in December 1996 where he remained living until 2005, and only returned to Mexico as a visitor. The applicant's paternal aunt states that the applicant's father resided with her in Denver from June 1996 until 2002. The record contains her tax transcript and income tax returns for the years 1996, 1999, 2000, and 2002, listing the applicant's father as her dependent.

We note important discrepancies in the statements provided by the applicant's father and paternal aunt. Whereas the applicant's father states that he moved to the United States in December 1996, his sister indicates that he began residing with her in Denver in June 1996. The applicant's paternal aunt also states on her 1996 tax return that the applicant's father resided with her for 12 months during the 1996 tax year. The applicant's paternal aunt submitted tax returns only for the years 1996, 1999, 2000 and 2002 and does not explain why she could not obtain transcripts for the 1997 and 1998 tax years. More importantly, although the applicant's father would have been twelve years old in 1996 and turned eighteen in 2002, the applicant's father did not submit any corroborating documentary evidence of his residence in Denver and dependency on this sister, such as school records, medical evidence, or other corroborating materials. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

Given the discrepancies between the applicant's father and paternal aunt's statements, and the lack of corroborating evidence, the applicant has not established that it is more likely than not that his father was physically present in the United States for five years prior to June 2003, two years of which were after 1998.

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.