

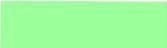


U.S. Citizenship
and Immigration
Services

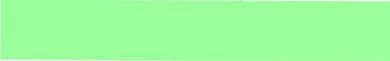
(b)(6)

Date: **AUG 13 2014**

Office: JACKSONVILLE, FL

FILE: 

IN RE:

Applicant: 

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

ON BEHALF OF APPLICANT:

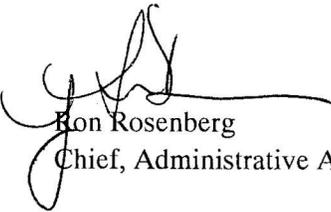


INSTRUCTIONS:

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 Jacksonville, Florida 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 Dominican Republic on January 14, 1989. The applicant's father, [REDACTED] was born in Ecuador on [REDACTED]. He became a U.S. citizen upon his naturalization on [REDACTED]. The applicant's mother is not a U.S. citizen. The applicant's parents were never married to each other. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship at birth through his father.

The director determined that the applicant failed to demonstrate that his father was physically present in the United States as required by section 301(g) of the Act, 8 U.S.C. § 1401(g), or that he fulfilled the requirements of section 309(a) of the Act, 8 U.S.C. § 1409(a). The director accordingly denied the application.

On appeal, the applicant, through counsel, maintains that his father was physically present in the United States as required. See Statement of the Applicant on Form I-290B, Notice of Appeal or Motion. In support of the appeal, the applicant submits sworn statements signed by his father's former employees and the applicant's mother.

Applicable Law

We review these proceedings *de novo*. 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. 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 1989. Section 301(g) of the Act is therefore applicable to his case and provides, in relevant 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

Because the applicant was born out of wedlock, section 301(g) of the act, *supra*, is applicable to his case only upon fulfillment of the conditions specified in section 309(a) of the Act.

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.

The applicant was born in 1989 in the Dominican Republic. The record contains a copy of his birth certificate, which includes a note stating that he was legitimated and recognized by his father [REDACTED] in 2005. Thus, the applicant can establish that he was legitimated. The record, however, does not contain clear and convincing evidence of a blood relationship between the applicant and his father. Additionally, the record does not contain a written agreement to provide financial support signed prior to 2007, when the applicant attained the age of 18. Thus, the applicant has failed to establish that he meets the requirements of section 309(a) of the Act.

We further find that the evidence in the record does not support the applicant's claim that his father was physically present in the United States for five years prior to the applicant's birth in 1989.

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 sworn statements submitted are contradictory, and lack sufficient detail or probative value. The applicant's mother states that she met the applicant's father in 1985 in the Dominican Republic, where he remained until 1991. *See* Statement of the [REDACTED] dated November 27, 2013. In her second statement, the applicant's mother indicates that the applicant's father resided in New York from December 1985 to January 1989, a period of only three years and directly in conflict with her earlier statement. *See* Statement of [REDACTED], dated February 27, 2014. The applicant's father, in turn, states that he was physically present in the United States since becoming a U.S. citizen in 1971, but that he frequently travelled to [REDACTED] from 1985 to 1991. *See* Statement of [REDACTED] dated November 22, 2013. Mr. [REDACTED] states that he was employed by the applicant's father in the Dominican Republic, but that the applicant's father was residing in the United States from 1986 to 1989. *See* Statement of [REDACTED] dated February 22, 2014. Ms. [REDACTED] attests that the applicant's father was domiciled in the United States. *See* Statement of [REDACTED], dated February 25, 2014. Neither Mr. [REDACTED] nor Ms. [REDACTED] had personal knowledge of the applicant's father's claimed U.S. domicile as they were both residing in the Dominican Republic between 1986 and 1989, a period which does not amount to five years, or correspond to the periods indicated by either the applicant's mother or father.

Given the discrepancies between the statements submitted, 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 January 1989.

Conclusion

In sum, the applicant has not fulfilled the requirements of section 309(a) of the Act, as amended, or any other provision of law, and cannot establish that he derived U.S. citizenship from his father.

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.