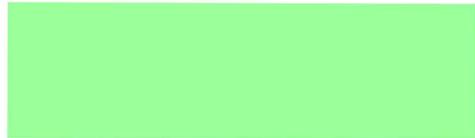




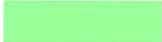
U.S. Citizenship
and Immigration
Services

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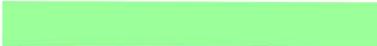


Date: **AUG 20 2014**

Office: ST. PAUL, MN

FILE: 

IN RE:

Applicant: 

APPLICATION: Application for Certificate of Citizenship under former Section 301 of the Immigration and Nationality Act; 8 U.S.C. § 1401 (1960).

ON BEHALF OF APPLICANT:

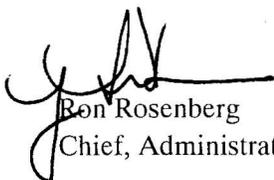


INSTRUCTIONS:

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 St. Paul, Minnesota 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 [REDACTED]. The applicant's parents, as indicated on his birth certificate, are [REDACTED]. The applicant's father was born in Mexico, but acquired U.S. citizenship through his U.S. citizen parent. The applicant's mother is not a U.S. citizen. The applicant's parents were married in Mexico in 1959. 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 November 13, 2013.

On appeal, the applicant, through counsel, maintains that he is eligible for a certificate of citizenship because "his father's statement offers evidence to rebut the presumption of alienage." *See Brief in Support of Appeal* at 2.

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); 8 C.F.R. § 341.2(c).

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 1960. Former section 301(a)(7) of the Act, 8 U.S.C. § 1401(a)(7), is applicable to his case and provided 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.

Analysis

At issue in this case is whether the applicant can establish that his father was physically present in the United States for ten years prior to [REDACTED] five of which were after 1949 (the applicant's father's fourteenth birthday).

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.)

In his sworn statement, the applicant's father admits that he "has no documentation of his presence in the United States . . . because it was so long ago." See Statement of [REDACTED]. The applicant's father's immigration file indicates that he was admitted to the United States in 1981. His immigrant visa application states that he was and had always resided in Mexico prior to immigrating to the United States. His Form N-600, Application for Certificate of Citizenship, indicates that he entered the United States on July 8, 1981.

The record contains no evidence of the applicant's father's physical presence in the United States prior to 1960. 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)).

On appeal, counsel claims that the director offered no evidence to rebut the applicant's father's claims; however, the burden is on the applicant, not U.S. Citizenship and Immigration Services (USCIS) to establish his eligibility for a certificate of citizenship. 8 C.F.R. § 341.2(c). Additionally, counsel claims that the director's decision was arbitrary and capricious. A review of the applicant's father's statement, however, reveals that it provides no probative details about

his alleged residence in the United States prior to 1960, such as the dates and addresses of his residence(s) and periods of employment. The applicant's father's simple and brief assertion that he resided in the United States prior to 1960 does not suffice to meet the applicant's burden of proof.

The requirements for U.S. citizenship, as set forth in the Act, are statutorily mandated by Congress, and that a certificate of citizenship can only be issued when an applicant meets the relevant statutory provisions. *See INS v. Pangilinan*, 486 U.S. 875, 885 (1988) (a person may only obtain citizenship in strict compliance with the statutory requirements imposed by Congress); *see also United States v. Manzi*, 276 U.S. 463, 467 (1928) (stating that "citizenship is a high privilege, and when doubts exist concerning a grant of it . . . they should be resolved in favor of the United States and against the claimant"). Moreover, "it has been universally accepted that the burden is on the alien applicant to show his eligibility for citizenship in every respect." *Berenyi v. District Director, INS*, 385 U.S. 630, 637 (1967).

The applicant has not established that it is more likely than not that his father was physically present in the United States for ten years prior to 1960, two of which were after 1949. Thus, the applicant cannot demonstrate that he acquired U.S. citizenship under former section 301(a)(7) of the Act.

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.