U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

Date: DEC 10 2014 Office: TAMPA, FL FILE: [redacted]

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship under former Section 301 of the Immigration and Nationality Act; 8 U.S.C. § 1401 (1954).

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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 Tampa, 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 Mexico on February 9, 1954. He claims that his father, was born on February in the United States. The applicant's mother, became a U.S. citizen upon her naturalization in 1965, when the applicant was 11 years old. The applicant's parents were married on April The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship at birth through his father.

The director denied the application upon finding that the applicant had failed to submit a copy of his father's birth certificate. The director concluded that the applicant did not establish that he had a U.S. citizen parent.

On appeal, the applicant states that his father's birth certificate was destroyed in a fire. *See* Statement of the Applicant on Form I-290B, Notice of Appeal or Motion. The applicant claims that his father was born in Tennessee and fought in World War II. *Id.* He states that he was brought to the United States by his parents when he was an infant and that he has resided in the United States since that time. *Id.*

Applicable Law

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 1954. Former section 301(a)(7) of the Act, 8 U.S.C. § 1401(a)(7), is applicable to this case and 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, however, that the applicant was born prior to his parents' marriage. 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]

Analysis

We review these proceedings *de novo*. At issue in this case is whether the applicant can establish that he is the child of a U.S. citizen who was physically present in the United States for ten years prior to 1954, five years of which were after 1939 (the applicant's father's 14th birthday). The applicant must also establish that he was legitimated prior to the age of 21.

The record does not contain a copy of the applicant's father's birth certificate, which the applicant states was destroyed in a fire. The regulations at 8 C.F.R. § 103.2(b)(2) provide that "if a required document . . . does not exist or cannot be obtained, an applicant . . . must demonstrate this and submit secondary evidence . . . pertinent to the facts at issue." The applicant has submitted a letter from Office of Vital Records in Tennessee stating that there is no record of the applicant's father's birth. The applicant has submitted a copy of his family's bible indicating his father's date of birth as February Nevertheless, the applicant's father's military records indicate that he was born in Tennessee on November Given the discrepancy in the date of birth between these two documents, neither can be deemed "sufficient to overcome the unavailability of primary evidence" of the applicant's father's date and place of birth. 8 C.F.R. § 103.2(b)(2)

The applicant has failed to establish that his father was born in Tennessee on February Without proof of his father's birth, the applicant cannot establish that he is the child of a U.S. citizen through whom he could acquire U.S. citizenship at birth.

The applicant also cannot establish that he derived U.S. citizenship through his mother. Although the applicant was 11 years old when his mother naturalized, he did not obtain lawful permanent resident status as is required by former section 321(a) of the Act, 8 U.S.C. 1432 (repealed).

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.

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[1]Amendments 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 applicant was over the age of 18 on November 14, 1986.