



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

Date: FEB 11 2014 Office: SAN ANTONIO, TX [Redacted]

IN RE: Applicant: [Redacted]

APPLICATION: Application for Certificate of Citizenship under Section 301(g) of the Immigration and Nationality Act, 8 U.S.C. § 1401(g) (1990).

ON BEHALF OF APPLICANT:

[Redacted]

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 San Antonio, Texas Field Office Director (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 and the application will remain denied.

The applicant was born on March 31, 1990 in Mexico to [REDACTED]. The applicant's parents were married at the time of the applicant's birth. The applicant's father was born on March 8, 1963 in Oklahoma and is a U.S. citizen by birth. The applicant's mother is a citizen of Mexico and a lawful permanent resident of the United States. The applicant was admitted to the United States as a nonimmigrant on June 22, 2008, and he was subsequently accorded lawful permanent resident status on January 7, 2010 at the age of nineteen. The applicant seeks a certificate of citizenship pursuant to section 301(g) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(g) (1990), as amended, based on the claim that he acquired U.S. citizenship at birth through his U.S. citizen father.

The director found that the applicant failed to establish that his U.S. citizen father was physically present in the United States for the requisite period prior to the applicant's birth, as required by section 301(g) of the Act. The application was denied accordingly. On appeal, the applicant, through counsel, asserts that the evidence is sufficient to show that his father met the physical presence requirements of section 301(g) of the Act. No additional evidence was submitted on appeal.

Applicable Law

The AAO conducts appellate review on a de novo basis. *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, 1029 n.3 (9th Cir. 2001) (internal quotation marks and citation omitted). The applicant in this case was born in 1990. Accordingly, section 301(g) of the Act controls his claim to acquired citizenship.

Section 301 of the Act provides in pertinent part:

The following shall be nationals and citizens of the United States at birth:

* * *

- (g) 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 applicant must therefore establish that his U.S. citizen father was physically present in the United States for no less than five years before the applicant's birth on March 31, 1990, and that at least two of those years were after his father's fourteenth birthday on March 8, 1977.

Specifically at issue in this proceeding is whether the applicant has demonstrated his father was physically present in the United States for at least two years after the latter's fourteenth birthday. The record contains the applicant's paternal grandfather's U.S. tax returns for 1963, 1968, and 1969 listing the applicant's father as a dependent; the applicant's father's report card from [REDACTED] for the 1969 to 1970 school year; a letter from [REDACTED] confirming the applicant's enrollment at [REDACTED] Elementary School from 1969 to 1971; the statements of the applicant's paternal grandmother, [REDACTED] and the sworn testimony of the applicant's father, paternal grandmother, and family friend, [REDACTED]

The record shows that the applicant's father was physically present in the United States at least three years before the age of fourteen, based on a combination of his school records and on the applicant's paternal grandfather's tax returns for 1963 (when the applicant's father was born), 1968, and 1969. However, the applicant has failed to establish by a preponderance of the evidence that his father was physically present in the United States for at least two years after his father's fourteenth birthday in March 1977 and before the applicant's birth in 1990.

The only evidence of the applicant's father's physical presence in the United States after March 1977 is the affidavits of the applicant's father, paternal grandmother, and family friend. These affidavits are very brief and similar, and they do not set forth in any detail the basis of each affiant's recollection of events that occurred some thirty years ago. In addition, the record shows discrepancies in the affiants' written statements and their sworn testimony under oath before United States Citizenship and Immigration Services (USCIS). The statement of family friend, [REDACTED], indicates that the applicant's father visited her in the United States during summer vacations and holidays from 1982 to 1984 and that he resided at her address from 1985 to 1987 while working at odd jobs in the United States. The record of her sworn statement on April 4, 2013 indicates that [REDACTED] initially testified that the applicant visited her on summer vacations for about two to three months from 1982 until 1988. Only upon reviewing her notes did she then state that the applicant also stayed in her home for two years from 1985 to 1987. No explanation was provided for the discrepancy in her statements, although an opportunity to do so was provided. Similarly, the applicant's paternal grandmother testified before USCIS that she did not know the exact periods of time that her son, the applicant's father, was in the United States, but indicated it was from 1985 to 1986 and again from 1987 to 1988. However, in her written statement, she was able to specify that the applicant's father went to the United States to live and work from January 19, 1985 to March 6, 1987 and from May 8 to December 17, 1988. Further, her testimony indicates that the applicant's father was present in the United States for one year periods from 1985 to 1986 and 1987 to 1988. This is inconsistent with her written statement and the written and verbal statements of the applicant's father and [REDACTED], asserting that the applicant's father was present in the United States for nearly two years from 1985 to 1987 and then again in 1988 for only approximately seven months.

Where 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 USCIS need not accept the evidence proffered by the applicant. *Matter of Tijerina-Villarreal*, 13 I&N Dec. 327 (BIA 1969).

The noted discrepancies cast doubt on the reliability of the statements of the applicant's family members and friends. It is incumbent upon the applicant to resolve any inconsistencies in the record such as this by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Here, the record lacks any independent objective evidence to corroborate the applicant's and the affiants' claims that the applicant's father was present in the United States for at least two years after his fourteenth birthday.

Accordingly, upon de novo review of the evidence, the applicant does not meet the requirements of section 301(g) of the Act to acquire citizenship at birth through his U.S. citizen father under that provision.

Conclusion

The applicant bears the burden of proof to establish his eligibility for citizenship under the Act. Section 341 of the Act, 8 U.S.C. § 1452; 8 C.F.R. § 341.2(c). Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed and the application remains denied.