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

(b)(6)

U.S. Citizenship and Immigration Services

Date: JUL 0 2 2014 Office: SAN ANTONIO, TX FILE:

IN RE: Applicant:

APPLICATION: Application for a Certificate of Citizenship under former Section 301(a)(7) of the Act, 8 U.S.C. § 1401(a)(7) (1959).

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

The Administrative Appeals Office (AAO) is reopening your case for the sole purpose of correcting an error in the decision regarding the year of your father's fourteenth birthday. Otherwise, the substance of the decision remains the same.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, San Antonio, Texas (the director), denied the Application for Certificate of Citizenship (Form N-600) and the matter came before the Administrative Appeals Office (AAO) on appeal, which was dismissed.[1] The AAO will reopen the matter on a Service motion, withdraw its prior decisions, and sustain the appeal.[2]

Pertinent Facts and Procedural History

The applicant was born in wedlock in Mexico on The applicant's father, was born in Wyoming on The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship at birth through his father.

The director initially concluded 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. The applicant, through counsel, maintains that his father was physically present in the United States as is required by former section 301(a)(7) of the Immigration and Nationality Act, 8 U.S.C. 1401(a)(7) (1959). The applicant submits a brief and evidence of his father's physical presence in the United States for at least 10 years prior to his birth in five of which were after 1942 (the applicant's father's birthday).

Applicable Law

The AAO reviews 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 Former section 301(a)(7) of the Act is therefore applicable to this case and stated, in pertinent part, that the following shall be nationals and citizens of the United States at birth:

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[1] The AAO rejected a subsequently filed motion because it was not accompanied by a rejected Form N-600 according to the regulation at 8 C.F.R. § 341.5(e).

[2] This decision, dated July 2, 2014, is a reissuance of our June 24, 2014 decision, where we incorrectly stated that the applicant's father turn years of age in 1932 instead of 1942. Other than a change in the year of the applicant's father's birthday from 1932 to 1942, the substance of the decision remains the same.

> [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 , five of which were after 1942. The applicant claims that his father resided in the United States from the time of his birth in until 1938, and then repeatedly visited and worked in the United States during the 1940's and 1950's. *See* Applicant's Brief at 6-10. In support of this claim, the applicant submits *inter alia* the following:

1) His father's birth and baptismal certificates, indicating that he was born in the United States in
2) Family photos;
3) A copy of a 1930 census document listing his father's name;
4) His paternal uncles' 1933 and 1938 birth certificates;
5) Copies of news articles dated in the 1930's, 1940's and 1950's mentioning his grandfather's family;
6) Copies of manifests showing that the applicant's paternal grandfather entered and resided in the United States in the 1930's and 1940's, including a manifest indicating that he resided in the United States from to 1938; and
7) An affidavit executed by the applicant's mother attesting to the applicant's father's physical presence in the United States.

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: "[w]e not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* "[W]here a claim of derivative citizenship has reasonable support, it cannot be rejected arbitrarily." *Matter of Tijerina-Villarreal,* 13 I&N Dec. 327, 331 (BIA 1969).

The preponderance of the evidence in the record demonstrates that the applicant's father was physically present in the United States for ten years prior to five of which were after 1942. The applicant's mother's affidavit and the applicant's claims are corroborated by probative documentary evidence of the applicant's father's presence in the United States in the 1930's,

1940's and 1950's. The applicant therefore has established that his father met the physical presence requirement of 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 been met.

ORDER: The matter is reopened and the AAO's prior decisions, dated April 14, 2006 and April 8, 2013, are withdrawn. The appeal is sustained and the matter remanded to the San Antonio Field Office for issuance of a Certificate of Citizenship to the applicant.