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: JUN 16 2014 Office: SAN ANTONIO, TX 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

[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 Director of the San Antonio, Texas 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 to unmarried parents in Mexico on May 11, 1984. His parents were married on May 25, 1984. The applicant's father was born in Brownsville, Texas on November 13, 1964, and he is a United States citizen. His mother is not a U.S. citizen. The applicant seeks a certificate of citizenship pursuant to former section 301(g) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(g), based on the claim that he acquired U.S. citizenship at birth through his U.S. citizen father.

In a decision dated October 24, 2013, the director determined that the applicant failed to establish that he met the requirements for acquisition of U.S. citizenship under former section 301 of the Act. The application was denied accordingly. On appeal the applicant asserts, through counsel, that many of the records pertaining to his father's United States physical presence have been destroyed or are no longer available due to passage of time; and that he has met his burden of establishing, by a preponderance of the evidence, that his father satisfied the physical presence requirements of former section 301(g) of the Act.

Applicable Law

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ,* 381 F.3d 143, 145 (3d. Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

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. INS,* 247 F.3d 1026, 1028 n.3 (9th Cir. 2001). Here, the applicant was born in 1984. Former section 301(g) of the Act therefore controls his claim to U.S. citizenship.[1]

Former section 301(g) of the Act provided, in pertinent part, that the following shall be citizens of the United States at birth:

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[1] Section 301(a)(7) of the Immigration and Nationality Act of 1952 (the 1952 Act) was re-designated as section 301(g) by the Act of October 10, 1978, Pub. L. No. 95-432, 92 Stat. 1046 (1978). The requirements of former section 301(g) of the Act remained the same as those under section 301(a)(7) of the 1952 Act after the re-designation and until 1986. Current section 301(g) of the Act applies to individuals born on or after November 14, 1986, the date of enactment of the Immigration and Nationality Act Amendments of 1986, Pub. L. No. 99-653, 100 Stat. 3655 (1986). (1986 Act). *See* Section 8(r) of the Immigration Technical Corrections Act of 1988, Pub. L. No. 100-525, 102 Stat. 2609 (1988).

> [A] person born outside the geographical limits of the United States . . . 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 . . . for a period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years.

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). *See also,* 8 C.F.R. § 341.2(c). The "preponderance of the evidence" standard requires that the record demonstrate that an applicant's claim is "probably true," based on the specific facts of each case. *Matter of Chawathe,* 25 I&N Dec. 369, 376 (AAO 2010) (citing *Matter of E-M-,* 20 I&N Dec. 77, 79-80 (Comm'r. 1989)).

Analysis

To establish that his father was physically present in the United States for 10 years prior to the applicant's birth on May 11, 1984, at least five years of which were after his father turned 14 on November 13, 1978, the record contains: the applicant's father's Texas birth certificate and a Texas birth identification card; summer camp attendance information; affidavits from the applicant's father, mother, and paternal uncle; a copy of the applicant's parents' divorce decree, property deeds for the applicant's father dated after the applicant's birth; and a letter from an investigation company.[2]

The applicant's father states, in pertinent part, in an affidavit dated November 28, 2012, that he was born in Brownsville, Texas; his parents lived in Mexico at the time of his birth, but took him to Brownsville, Texas for hospital appointments; he attended school in Mexico; and he attended in Hunt, Texas from the time he was eight until he was 13 years old. He states further that his mother bought a home at in Brownsville, Texas on December 25, 1977, and that although he continued to go to school in Mexico, and later work in Mexico, he lived in Texas between December 1977 until he was 16 years old (November 1980); he sometimes lived in Mexico and sometimes in Texas after he turned 16; and he moved to Texas permanently after the applicant was born.

The applicant's mother states, in pertinent part, in an affidavit dated November 28, 2012, that she met, and began dating the applicant's father in Mexico in 1982; at the time they met, the applicant's father's family had homes in Mexico and Texas, and his father stayed at both places; and she lived with the applicant's father in Texas from around 1983 until the applicant's birth.

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[2] A Texas identification card and driver's license contained in the record were issued to the applicant's father after the applicant's birth.

The applicant's paternal uncle indicates, in pertinent part, in a December 23, 2013 affidavit that he was born and raised in Mexico, and that the applicant's father was born in Texas.

of in Texas, states in a letter dated December 6, 2013, that she remembers that the applicant's father attended her summer camp. attendance information reflects that the applicant's father attended the summer camp in 1976, 1977, and 1978.

A letter from an investigation company reflects the company's attempts to obtain documentation pertaining to the applicant's father's physical presence in the United States prior to the applicant's birth; including searching voting and Selective Service registration records, for which no records were found; requesting U.S. Census records; and searching Texas property records.

Upon review, we find that the applicant established that his father was physically present in the United States at the time of his birth in November 1964, and for up to three months during the summers of 1976, 1977 and 1978. The applicant failed, however, to establish, by a preponderance of the evidence, that his father was physically present in the United States for 10 years prior to the applicant's birth on May 11, 1984, at least five years of which were after his father turned 14 on November 13, 1978. The investigation company found no voting or Selective Service registration records for the applicant's father; the record does not contain the referred to U.S. Census information; and the record lacks any evidence to establish that such records are unavailable due to destruction or passage of time.

In ascertaining the evidentiary weight of affidavits, the Service must determine the basis for the affiant's knowledge of the information to which he is attesting, and whether the statement is plausible, credible, and consistent both internally and with the other evidence of record. *See Matter of E-M-*, 20 I&N Dec. 77 (Comm'r. 1989). In the present matter, the affidavits have diminished evidentiary weight. The affidavit from the applicant's father is vague and lacks material detail about dates and places he was physically present in the United States; moreover, the applicant's father indicates that he did not live in the United States until his mother bought property at in Brownsville in December 1977. The record lacks evidence establishing that 1977 property records are unavailable due to destruction or passage of time, and the Brownsville, Texas property records in the record contain the name of an unrelated owner, not the applicant's paternal grandmother, and are dated after the applicant's birth.[3] The applicant's father indicates further that he attended summer camp in Texas from the time he was eight years old (1972) until he was 13 (1977); however, the summer camp evidence corroborates attendance only during the summers in 1976, 1977 and 1978. The affidavit by the applicant's mother is also uncorroborated by independent documentary evidence; lacks personal knowledge of the applicant's father's U.S. physical presence prior to 1983; and lacks material detail about exact dates and places that the applicant's father was physically present in the

[3] Other Texas property records contained in the record for the applicant's father are also dated after the applicant's birth.

United States after 1983. The affidavit from the applicant's paternal uncle states simply that the applicant's father was born in the United States; moreover, the applicant's uncle was born and raised in Mexico, and he lacks personal knowledge of the applicant's father's U.S. physical presence.

Overall, the record fails to demonstrate, by a preponderance of the evidence, that the applicant's father was physically present in the United States for 10 years prior to the applicant's birth, at least five years of which were after his father turned 14, as required under former section 301(g) of the Act. The regulation at 8 C.F.R. § 341.2(c) states that the burden of proof is on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. Here, the applicant has failed to meet his burden of proof. Accordingly, the appeal will be dismissed.

Conclusion

The applicant has not met the requirements of former section 301(g) of the Act, or any other provision of law. 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. Here, that burden has not been met.

ORDER: The appeal is dismissed. The application remains denied