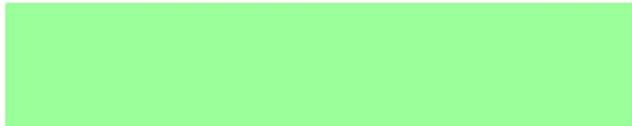


(b)(6)

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

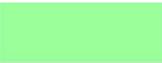


U.S. Citizenship
and Immigration
Services

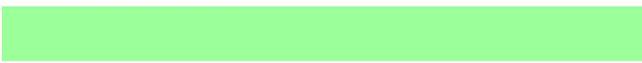


Date: **JUN 16 2014**

Office: NEW YORK, NY

FILE: 

IN RE:

Applicant: 

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

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director of the New York, New York District 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 Yemen to married parents on January 14, 1988. His father was born in Yemen on May 15, 1951, and became a naturalized U.S. citizen on November 4, 1980, prior to the applicant's birth. His mother is not a U.S. citizen. 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), based on the claim that he acquired U.S. citizenship at birth through his U.S. citizen father.

In a decision dated September 23, 2013, the director determined that the applicant failed to establish that he met the requirements for acquisition of U.S. citizenship under section 301 of the Act. The application was denied accordingly. On appeal, the applicant submits evidence relating to his father's physical presence in the United States and DNA evidence.

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 1988. Accordingly, section 301(g) of the Act controls his claim to U.S. citizenship.¹

Section 301(g) of the Act provides in pertinent part that the following shall be 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

¹ 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).

than five years, at least two 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 burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence.) 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

The record contains birth certificate and DNA test result evidence to establish that the applicant is the biological son of [REDACTED] who became a naturalized U.S. citizen on November 4, 1980. To establish that his U.S. citizen father was physically present in the United States for five years prior to the applicant’s birth on January 14, 1988, at least two years of which were after his father turned 14, on May 15, 1965, the applicant submits passport information for his father.

Information contained in the passport reflects that the applicant’s father was admitted into the United States on October 22, 1983, and on February 4, 1986. The passport also contains Yemen admission and departure stamps. The information is not written in English; however, handwritten, English-language notes indicate the following about the Yemen entry and exit stamp information:

Entry on January 25, 1983, and departure on October 21, 1983;
Entry on April 30, “9985”, and departure on February 4, 1986; and
Entry on April 20, “1887”, and departure June 7, 1988.

The English translations do not comply with translation requirements contained in 8 C.F.R. § 103.2(b)(3)²; moreover, the translations contain obvious errors with regard to the dates. The translations therefore cannot be considered in the applicant’s case.

² The regulation provides, in pertinent part, at 8 C.F.R. § 103.2(b)(3) that:

Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

The record additionally contains a copy of an immigrant visa petition-related sworn Affidavit of Residence and Paternity, signed by the applicant's father on February 25, 2009, in which the applicant's father states, in pertinent part, that he has "been physically present in the United States as follows:"

October 22, 1983 to April 30, 1985
February 4, 1986 to April 21, 1987³

Upon review, we find that the applicant has failed to establish, by a preponderance of the evidence, that his father was physically present in the United States for five years prior to the applicant's birth on January 14, 1988, at least two years of which were after his father turned 14 on May 15, 1965, as required under section 301(g) of the Act. Although the evidence reflects that the applicant's father was physically present in New York at the time of his naturalization in November, 1980, the record lacks evidence to establish how long he was present in New York either before, or after his naturalization; and, at best, the evidence establishes that the applicant's father was physically present in the United States for up to three years after 1980, and prior to the applicant's birth.

Beyond the director's decision, we find that the applicant also failed to establish that he qualifies for derivative U.S. citizenship under section 320 of the Act, 8 U.S.C. § 1431.

Section 320 of the Act, as amended by the Child Citizenship Act of 2000 (the CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), took effect on February 27, 2001, and applies to persons who were not yet 18 years old as of February 27, 2001. Because the applicant was under the age of 18 on February 27, 2001, section 320 of the Act applies to his citizenship claim. See *Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001).

Section 320 of the Act provides, in pertinent part, that:

- (a) A child born outside of the United States automatically becomes a citizen of the United States when all of the following conditions have been fulfilled:
 - (1) At least one parent of the child is a citizen of the United States, whether by birth or naturalization
 - (2) The child is under the age of eighteen years
 - (3) The child is residing in the United States in the legal and physical custody of the citizen parent pursuant to a lawful admission for permanent residence.

³ Recent U.S. passport and New York identification cards contained in the record were issued to the applicant's father after the applicant's birth.

The applicant obtained U.S. lawful permanent resident status on April 30, 2009, when he was 21 years old. He therefore does not satisfy the requirements set forth in section 320(a)(2) and (3) of the Act.

Conclusion

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed. The application remains denied