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

U.S. Citizenship and Immigration Services

(b)(6)

[redacted]

Date: JUN 18 2014 Office: HARLINGEN, 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.

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 Director of the Harlingen, 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 in the Mexico on April 13, 1972. The applicant's father, [redacted] was born in Mexico on June 15, 1933, but acquired U.S. citizenship at birth. The applicant's mother, [redacted] is not a U.S. citizen. The applicant's parents were married in Mexico in 1962. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship at birth through his father.

The director found 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. *See Director's Decision*, dated March 8, 2013.

On appeal, the applicant, through counsel, maintains that his father was physically present in the United States since 1955. *See* Appeal Brief. Counsel argues that the director erred in relying on the testimony given by the applicant's father in connection with his Form N-600, Application for Certificate of Citizenship. *Id.* Counsel states that the director should instead have relied on the information provided in the affidavits of [redacted] and on the fact that the applicant's sister obtained a certificate of citizenship in 2005. *Id.*

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 1972. Former section 301(a)(7) of the Act, 8 U.S.C. § 1401(a)(7), is applicable to his case.

Former section 301(a)(7) of the Act 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.

Analysis

At issue in this case is whether the applicant can establish that his father was physically present in the United States as is statutorily required. The applicant claims that his father resided in the United States starting in 1955. In support of this claim, the applicant submits the following:

1) an affidavit signed by his father's cousin, indicating that he worked with him in construction between 1960 and 1985. The affidavit is accompanied by Mr. certificate of citizenship, issued in 1968.
2) an affidavit signed by a friend of the applicant's father. Mr. indicates that he met the applicant's father in 1955 and attested to his residence in the United States until 1962 and after 1968. The affidavit is accompanied by Mr. lawful permanent resident card indicating that he has been a permanent resident of the United States since 1955.
3) the applicant's sister's certificate of citizenship, issued in 2005.
4) the applicant's father's certificate of citizenship, issued in 1968.
5) copies of pay stubs and wage and tax statements, the earliest of which is dated 1967 (without the applicant's father's name) and 1969.

The record also contains the applicant's brothers' birth and baptismal certificates, indicating that they were born in Mexico in 1964 and 1968, respectively. The applicant's sister was born in Mexico in 1975. As noted by the director, the applicant's father testified in connection with his citizenship application that he had not resided in the United States prior to 1968, and only visited twice.

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: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." Id. If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the affected party to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

The Board held in *Matter of Tijerina-Villarreal,* 13 I&N Dec. 327, 331 (BIA 1969), that:

> [W]here 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 the special inquiry officer need not accept the evidence proffered by the claimant. (Citations omitted.)

The affidavits of [redacted] and [redacted] contradict the contemporaneous testimony given by the applicant's father in connection with his application for a certificate of citizenship in 1968. The information contained in the affidavits is not corroborated by documentary evidence. The pay stubs and wage and tax statements submitted, at best, establish that the applicant's father was employed in the United States starting in 1967 and not since 1955 as the applicant claims. The issuance of the applicant's father's certificate of citizenship in 1968, along with his contemporaneous testimony, indicates that the applicant's father was not physically present in the United States as claimed starting in 1955. Moreover, the applicant's brother's birth certificates indicate that they were born in Mexico in 1964 and 1968, suggesting that the applicant's father spent a more significant amount of time in Mexico during the relevant ten year period than claimed.

Counsel claims that the applicant's U.S. citizenship has been established by virtue of the approval of his sister's citizenship application in 2005. In support of the citizenship claim, the applicant's sister submitted an unnamed 1967 pay stub and several wage statements dating from 1968 to 1975. The file also contains an affidavit from the applicant's father's aunt stating that the applicant's father resided with her from 1965 until 1969 while "he worked in the field with several ranchers in Texas." Additionally, the file contains an affidavit signed by the applicant's paternal aunt stating that the applicant's father lived in the United States from 1965 to 1979 and worked in the field. The applicant's sister's file does not contain any evidence to establish that the applicant's father was physically present in the United States prior to 1965. Moreover, contrary to counsel's claims, the AAO is not required to approve the applicant's claim, where eligibility has not been demonstrated, merely because of a prior approval in another case that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm'r 1988); *see also Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

The applicant cannot establish that it is more likely than not that his father was physically present in the United States for a period or periods totaling not less than ten years prior to April 13, 1972 (the applicant's date of birth), at least five of which were after the applicant's father turned 14 on June 15, 1947.

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.