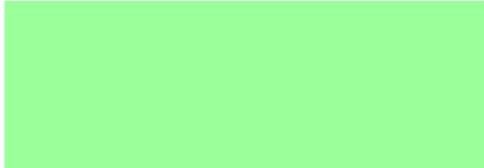


(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office
20 Massachusetts Ave., NW, MS 2090
Washington, DC 20529-2090

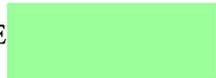


U.S. Citizenship
and Immigration
Services

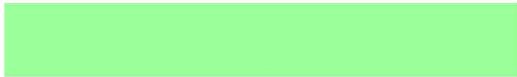


DATE: **JUN 18 2014** OFFICE: NEW ORLEANS, LA

FILE



IN RE:



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:

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 Orleans, Louisiana Field Office (the director) denied the Application for Certificate of Citizenship (Form N-600) on July 9, 2009, and the Administrative Appeals Office (AAO) dismissed the matter on appeal on March 25, 2010. The AAO granted a subsequent motion to reopen and reconsider, and the prior AAO decision was affirmed on September 23, 2010. The matter is again before the AAO on a motion to reopen and reconsider. The motion is granted. The AAO decisions, dated March 25, 2010 and September 23, 2010, are affirmed. The underlying application remains denied.

Pertinent Facts and Procedural History

The applicant was born in Mexico on April 25, 1957, to married parents. His mother, now deceased, was born in the United States on July 17, 1928, and she was a U.S. citizen. His father was born in Mexico, and is not a U.S. citizen. The applicant seeks a certificate of citizenship pursuant to former section 301(a)(7) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(a)(7), based on the claim that he acquired U.S. citizenship at birth through his mother.

The director determined, in a decision dated July 9, 2009, that the applicant had failed to establish, by a preponderance of the evidence, that his mother was physically present in the United States for 10 years prior to the applicant's birth, at least five years of which occurred after she turned 14, as required under former section 301(a)(7) of the Act. The Form N-600 was denied accordingly.¹ In a decision dated March 25, 2010, we dismissed the applicant's appeal on the basis that he failed to establish, by a preponderance of the evidence, that his mother met U.S. physical presence requirements set forth in former section 301(a)(7) of the Act. On September 23, 2010, we affirmed our prior decision on motion. The matter is again before us on a second motion to reopen and reconsider.²

In his current motion to reopen and reconsider, the applicant asserts that we did not consider all of the affidavits submitted in his case, or give proper evidentiary weight to sworn affidavits in the record. He asserts further that affidavit information in the record is consistent with regard to his

¹ 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. *Chau v. INS*, 247 F.3d 1026, 1028 n.3 (9th Cir. 2001). The applicant was born in 1957. Former section 301(a)(7) of the Act therefore applies to his citizenship claim. Under former section 301(a)(7) of the Act the following shall be citizens of the United States at birth:

[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.

² In December 2011, the applicant filed a motion to reopen and reconsider our September 23, 2010 decision. The director of the New Orleans, Louisiana Field Office denied the motion on July 27, 2012; however, the director did not have jurisdiction over the decision. See 8 C.F.R. § 103.5(a)(ii). The matter has therefore been forwarded to us for consideration pursuant to 8 C.F.R. § 103.5(a)(5).

mother's physical presence in the United States, and that the sworn affidavit statements are sufficient to establish his mother's required U.S. physical presence under the former Act. To support his assertions, the applicant provides previously submitted affidavits, with translations, and new affidavits addressing inconsistencies in the evidence. He also refers to legal decisions, *U.S. v. Kis*, 658 F.2d 526 (7th Cir. 1981) and *Kaba v. Stepp*, 458 F.3d 678 (7th Cir. 2006).³

Analysis

We review these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review, we find that the applicant has failed to establish his claim to U.S. citizenship. Contrary to the applicant's assertions, we considered all of the evidence in his case and gave proper evidentiary weight to sworn affidavits in the record.

Our March 25, 2010 decision reflects that the applicant had established, by a preponderance of the evidence, that his mother was physically present in the United States for five years after her 14th birthday, and prior to the applicant's birth in 1957. The combined evidence failed, however, to demonstrate, by a preponderance of the evidence, that the applicant's mother was physically present in the United States for 10 years prior to the applicant's birth, as required under former section 301(a)(7) of the Act.

When filing his first motion, the applicant indicated that we improperly reviewed the evidence in his case; that affidavits established, by a preponderance of the evidence, that his mother was physically present in the United States for 10 years prior to his birth. In affirming our March 25, 2010 decision on motion, we again reviewed all of the evidence in the record, including resubmission of birth certificate, baptismal certificate, and affidavit evidence; however, overall we found that the evidence in the record did not demonstrate, by a preponderance of the evidence, that the applicant acquired citizenship under former section 301(a)(7) of the Act. We also noted inconsistencies in his maternal aunt's statement that the applicant's mother was physically present in the United States until she was five years old, and his mother's statement that she was in the United States until the age of six.

On current motion, the applicant submits a new affidavit from attorney, [REDACTED] indicating that the attorney prepared the applicant's maternal aunt's sworn affidavit and that the attorney mistakenly typed in the affidavit that the applicant's mother was in the United States until the age of five, rather than the age of six. Two new witness affidavits from the applicant's cousins reflect that they were present when the applicant's maternal aunt's affidavit was prepared, and that the applicant's maternal aunt stated that the applicant's mother moved to Mexico when she was six years old, rather than when she was five years old. We find that, even if the new affidavits overcome inconsistencies in the applicant's maternal aunt's sworn affidavit with regard to the applicant's mother's age when she left the United States, the previously submitted affidavits nevertheless have diminished evidentiary value, in that the statements are uncorroborated by

³ The applicant also asserts that Spanish-language evidence contained in the record was improperly ignored. The issue need not be addressed as the record now contains English translations of pertinent documents, as required under 8 C.F.R. § 103.2(b)(3).

independent evidence, lack material detail, and fail, on their own, to establish that the applicant's mother lived in the United States after the time of her birth until she was six years old.

Although the applicant indicates on motion that the Seventh Circuit Court of Appeals (Seventh Circuit) has determined that sworn affidavits alone are sufficient to prove a *prima facie* claim of citizenship, we find these assertions unconvincing. The applicant's case arises within the jurisdiction of the Fifth Circuit Court of Appeals, not the Seventh Circuit. We are therefore not bound by Seventh Circuit Court published decisions in the present matter. *See N.L.R.B. v. Ashkenazy Property Management Corp.*, 817 F.2d 74, 75 (9th Cir. 1987) (the AAO is bound by published decisions from the circuit court of appeals where the action arose.) Furthermore, even if we were bound by the Seventh Circuit Court decisions, a review of the referenced cases reflects that neither decision addresses a U.S. citizenship claim, or states that sworn affidavits alone are sufficient to establish a claim to citizenship. At best, the *Kaba v. Stepp* case states that "[s]worn affidavits, particularly those that are detailed, specific, and based on personal knowledge, are competent evidence to rebut [a] motion for summary judgment." (internal quotations omitted.)

In ascertaining the evidentiary weight of affidavits, the Service must determine the basis for the affiant's knowledge of the information to which she or 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). Here, the affidavit evidence contained in the record has diminished evidentiary weight with regard to the applicant's mother's physical presence in the United States for ten years. The affidavits from the applicant's father, and the applicant's mother's pastor and friends refer only to U.S. physical presence for time periods between 1946 and 1952. Furthermore, although the applicant's mother's, and maternal aunt's affidavits refer to the applicant's mother's birth in the United States on July 17, 1928, and indicate that her parents took her to Mexico when she was six years old, the affidavits lack material details about specific places and dates that the applicant's mother was physically present in the United States from the time of her birth until she turned six. Moreover, the record contains no independent evidence to corroborate the assertions.

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-* at 79-80). The applicant failed to meet his burden of establishing, by a preponderance of the evidence, that his mother was physically present in the United States for 10 years prior to the applicant's birth, as required under former section 301(a)(7) of the Act. Because the applicant has failed to establish statutory eligibility for U.S. citizenship, a certificate of citizenship cannot be issued. *See Fedorenko v. U.S.*, 449 U.S. 490, 506 (1981) (stating that strict compliance with statutory prerequisites is required to acquire citizenship.)

Conclusion

The applicant has not met the requirements of former section 301(a)(7) 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; 8 C.F.R. § 341.2(c). Here, that burden has not been met.

ORDER: The motion is granted. The AAO's prior decisions, dated March 25, 2010 and September 23, 2010, are affirmed. The underlying application remains denied.