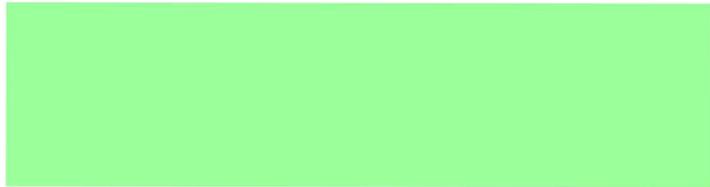




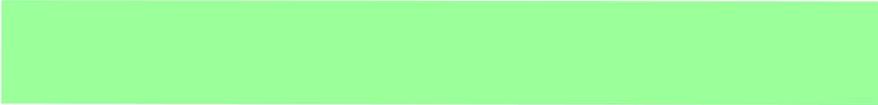
U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: JUN 19 2014 OFFICE: NEW ORLEANS, LA

FILE: 

IN RE: 

APPLICATION: Application for Certificate of Citizenship under Section 309(c) of the Immigration and Nationality Act, 8 U.S.C. § 1409(c)

ON BEHALF OF APPLICANT:

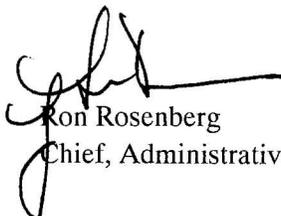


INSTRUCTIONS:

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 New Orleans, Louisiana 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 Mexico on January 22, 1964. He seeks a certificate of citizenship pursuant to section 309(c) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1409(c), based on the claim that he acquired U.S. citizenship at birth through his mother.

In a decision dated April 21, 2011, the director determined that the applicant failed to establish that his mother is a U.S. citizen. The director determined further that, even if the applicant had established that his mother was a U.S. citizen, he failed to establish that he was born out of wedlock, as required under section 309(c) of the Act; or that his mother met U.S. physical presence requirements for acquisition of citizenship for children born in wedlock, as set forth in former section 301(a)(7) of the Act; 8 U.S.C. § 1401(a)(7). The application was denied accordingly.

Through counsel, the applicant asserts on appeal that annulment of marriage evidence establishes that his mother was unmarried when he was born, and that he therefore satisfies the requirements set forth in section 309(c) of the Act. The applicant does not address the director's finding that he failed to establish his mother's U.S. citizenship.

Applicable Law

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). 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).

Section 309(c) of the Act provides, in relevant part that:

[a] person born, after December 24, 1952, outside the United States and out-of-wedlock shall be held to have acquired at birth the nationality status of his mother, if the mother had the nationality of the United States at the time of such person's birth, and if the mother had previously been physically present in the United States or one of its outlying possessions for a continuous period of one year.

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.¹

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. 8 C.F.R. § 341.2(c). See also, *Matter of Baires-Larios*, 24 I&N Dec. 467, 468 (BIA 2008). 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 Applicant’s Mother is Not a U.S. Citizen

The record contains a birth certificate, reflecting that the applicant was born in [REDACTED] Mexico on [REDACTED] 22, 1964 to [REDACTED] (mother), and [REDACTED] (father). To establish the applicant’s mother’s U.S. citizenship, the record contains a Texas Delayed Certificate of Birth, filed on October 18, 1982, stating that [REDACTED] was born to [REDACTED] (father) and [REDACTED] (mother) in [REDACTED] Texas on [REDACTED] 22, 1948. In addition, the applicant’s mother states, in an affidavit dated October 5, 2009, that she was born in [REDACTED] Texas on [REDACTED] 22, 1948. However, the record also contains a copy of a Mexican birth certificate, registered on [REDACTED] 1, 1948, reflecting that [REDACTED] was born in [REDACTED] Tamaulipas, Mexico on [REDACTED] 24, 1947, to [REDACTED] (father) and [REDACTED] (mother).

The Board of Immigration Appeals addressed the evidentiary weight to be given to a delayed birth certificate in *Matter of Serna*, 16 I&N Dec. 643, 645 (BIA 1978), indicating that each case is “decided on its own facts with regard to the sufficiency of the evidence presented as to the petitioner’s birthplace,” and that evidentiary value is rebutted by contradictory evidence. Here, the applicant’s mother’s Texas delay-issued birth certificate has diminished evidentiary weight. The birth certificate reflects that it was filed in 1982, based on the applicant’s mother’s submission of: a 1952 baptism certificate; a 1973, delayed birth certificate for a child; and a 1982 statement by the applicant’s maternal grandparents. The present record does not contain any of the documents that were submitted in support of the delay-issued birth certificate, and we note that, even if the documents were contained in the record, they were not issued contemporaneously with the applicant’s mother’s alleged birth in Texas. Moreover, the information contained in the delay-issued Texas birth certificate is directly rebutted by the applicant’s mother’s Mexican birth certificate, which was registered in 1948, 34 years before the Texas birth certificate was issued.

¹ Former section 301(a)(7) of the 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(a)(7) of the Act remained the same after the re-designation and until 1986.

The applicant's mother's affidavit also has diminished evidentiary weight. 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. *Matter of E-M-*, 20 I&N Dec. 77 (Comm'r 1989). The applicant's mother's October 2009, affidavit states simply that she was born in [REDACTED] Texas on [REDACTED] 22, 1948. The affidavit lacks material detail, and is uncorroborated by contemporaneous evidence of her birth in the United States. Furthermore, the information contained in the applicant's mother's affidavit is materially inconsistent with her Mexican birth certificate, reflecting that she was born in Mexico on [REDACTED] 24, 1947.

Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). Here, the applicant's mother's delay-issued Texas birth certificate and affidavit have diminished evidentiary value, as they contradict information on the applicant's mother Mexican birth certificate, indicating that the applicant's mother was born in Mexico on [REDACTED] 24, 1947. Accordingly, the applicant has failed to establish, by a preponderance of the evidence, that his mother is a U.S. citizen, and he does not qualify for citizenship under section 309(c) of the Act.

The Applicant Was Not Born Out of Wedlock

Even if the applicant had established that his mother was a U.S. citizen, the applicant would not have satisfied the requirements of section 309(c) of the Act, in that the applicant failed to establish that he was born out of wedlock. The record contains a marriage certificate reflecting that the applicant's parents were married in [REDACTED] Mexico on March 26, 1962. The record also contains an annulment judgment reflecting that on March 17, 2009, the applicant's parents' marriage was annulled by a court in [REDACTED] Mexico.² A Library of Congress (LOC) opinion was prepared in the applicant's case, reflecting, in pertinent part, that the [REDACTED] Civil Code of 1961 (the Civil Code) was in force in 1962, and regulated marriages. *See LOC 2009-02130*. The Civil Code provided "that a marriage entered into by minors without parental consent, could be declared null"; however, lack of parental consent ceased to be grounds for nullifying a marriage when children were born into the marriage, or once the minor reached the age of 21. *Id.* (citing to arts. 133-134, 141, 248-II, and 250). Moreover, marriages were presumed to be valid; could be considered null only by a court judgment, and "children born to a marriage that was declared null were considered to be born in wedlock." *Id.* (citing to arts. 266, 268, 269, 354). Although the record contains evidence that the applicant's parents' marriage was judicially annulled in 2009, the applicant was nevertheless considered to be born in wedlock under the law in [REDACTED] Mexico.

Furthermore, even if the provisions of the [REDACTED] Civil Code had not provided that the applicant was born in wedlock, the annulment would not have been given retroactive effect in this case. *See*

² The judgment refers to nationality and age errors and corrections on the applicant's parents' original marriage certificate, which establish that the applicant's mother was 13 when she married, and thus under the age allowed to marry.

Matter of Magana, 17 I&N Dec. 111, 114 (BIA 1979) and *Matter of Astorga*, 17 I&N Dec. 1, 4 (BIA 1979) (retroactive effect ought to be given to an annulment only when to do so would bring about a more just result, or be compatible with the purpose and intent of the immigration law). See also, *Hendrix v. INS*, 583 F.2d 1102, 1104 (9th Cir. 1974) (stressing the need “to avoid manipulation of the immigration priorities through changes in marital status not undertaken in good faith.”) The applicant’s parents’ annulment appears to have been sought for immigration purposes, in that the judgment was issued over 40 years after the applicant’s parents’ marriage occurred and only after removal proceedings were initiated against the applicant.

Accordingly, the applicant has failed to establish that he was born out of wedlock, as required under section 309(c) of the Act.

The Applicant’s Mother Does Not Have the Required Years of Physical Presence in the United States

Having determined that the applicant was born in wedlock, he could only acquire U.S. citizenship through his mother under former section 301(a)(7) of the Act. As previously discussed, the applicant failed to establish that his mother is a U.S. citizen, so his claim to U.S. citizenship fails on that basis alone. Moreover, even if the applicant’s mother’s U.S. citizenship could be credibly established, the record does not demonstrate that the applicant’s mother 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 mother turned fourteen. Based upon the dates of the applicant and his mother’s births ([REDACTED] 22, 1964 and [REDACTED] 24, 1947, respectively) it is not possible for the applicant’s mother to demonstrate 5 years of physical presence in the United States from the time she turned fourteen years of age in August 1961 until the applicant’s birth in January 1964.

Conclusion

The applicant has not met the requirements of section 309(c) of the Act, 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 appeal is dismissed. The application remains denied