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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: OCT 10 2014 OFFICE: LOS ANGELES, CA FILE:

IN RE:

APPLICATION: Application for Certificate of Citizenship under Sections 309(a) and 301(a)(7) of the Former Immigration and Nationality Act, 8 U.S.C. §§ 1409(a) and 1401(a)(7)

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 Los Angeles, California 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 March 2, 1956, to unmarried parents. He seeks a certificate of citizenship pursuant to former sections 309(a) and 301(a)(7) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1409(a) and 1401(a)(7), based on the claim that he acquired U.S. citizenship at birth through his father.[1]

The director determined that the applicant failed to establish by clear and convincing evidence that he was born to a U.S. citizen parent, and that he failed to satisfy the requirements for children born out of wedlock, as set forth in section 309(a) of the Act, as amended. The Form N600 was denied accordingly. Through counsel, the applicant asserts on appeal that the director erroneously applied section 309(a) of the amended Act and clear and convincing burden of proof standards to his case; and that the record establishes, by a preponderance of the evidence, that U.S. citizen, is his biological father,[2] and that he meets acquisition of citizenship requirements under former sections 309(a) and 301(a)(7) of the Act.[3] To support his assertions, the applicant submits an amended birth certificate, his parents' marriage certificate, a copy of his mother's Will, and U.S. military service and Social Security earnings information for

We conduct appellate review on a *de novo* basis. *See Soltane v. DOJ,* 381 F.3d 143, 145 (3rd Cir. 2004).[4]

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[1] The applicant's mother, now deceased, was born in Mexico and became a naturalized U.S. citizen on June 10, 1999, when the applicant was years old.

[2] The record contains birth certificate reflecting that he was born in North Carolina on April He is now deceased.

[3] The applicant also asserts that: the director improperly relied on undisclosed evidence in his case; U.S. Citizenship and Immigration Services (USCIS) and U.S. Department of State (DOS) responses to his Freedom of Information Act (FOIA) requests did not include documentation referred to in the director's decision; and USCIS and DOS violated administrative procedures if the undisclosed documentation is present in his record of proceedings. We do not have jurisdiction over claims relating to incomplete or inaccurate FOIA responses. A separate FOIA appeal process is available, and concerns regarding an incomplete response or withholding of FOIA information should be directed to the responding USCIS FOIA or DOS office. *See https://ogis.archives.gov.*

[4] We issued a Notice of Derogatory Evidence (NOD) to the applicant on August 20, 2014, providing him with copies of his untranslated birth certificate, registered on March his immigrant visa application, dated January 7, 1958; and a December 12, 1957 affidavit from The

Applicable Law

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 was born in 1956. Former section 301(a)(7) of the Act therefore applies to his acquisition of citizenship claim.

Former section 301(a)(7) of the Act provided, 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 . . . 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.[5]

In addition, an applicant born out of wedlock must satisfy the provisions set forth in section 309(a) of the Act. Prior to November 14, 1986, former section 309(a) of Act required that a U.S. citizen father's paternity be established by legitimation while the child was under the age of 21.[6]

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); *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)).

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applicant was allowed 30 days to review and respond to the derogatory information. His response to the NOD has been incorporated into the appellate record.

[5] Section 301(a)(7) of the former 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 section 301(a)(7) of the former Act remained the same after the re-designation and until 1986.

[6] Amendments made to the Act in 1986, included a new section 309(a) applicable to persons who had not attained 18 years of age or been legitimated as of the November 14, 1986 date of the enactment of the Immigration and Nationality Act Amendments of 1986, Pub. L. No. 99-653, 100 Stat. 3655 (INAA).

Analysis

To establish that is his biological father and that he was legitimated by the applicant submits a marriage certificate reflecting that his mother married on June and an amended birth certificate, registered in the State of Baja California, Mexico on July reflecting that he was born to The applicant also submits a copy of his mother's March 3, 2009 *Will*, indicating that during her marriage to she "procreated 2 . . . children," one of whom is the applicant.

The record, however, also contains evidence that conflicts with the birth certificate and *Will*. Specifically, the record contains an immigrant visa application, signed by the applicant's mother under oath on January stating that the applicant's father's name and address are unknown; an Affidavit of Support signed by on December reflecting that the applicant is his stepchild; and an untranslated birth certificate for the applicant, registered in the State of Baja California, Mexico on March which appears to contain no paternal information for the applicant.[7]

It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The same evidentiary weight does not attach to a delayed birth certificate as would attach to one contemporaneous with the actual event. *See Matter of Lugo-Guadiana*, 12 I&N Dec. 726, 729 (BIA 1968). A delayed certificate must be evaluated in light of other evidence in the record and in light of the circumstances of the case. *See Matter of Bueno-Almonte,* 21 I&N Dec. 1029, 1033 (BIA 1997). The evidentiary value given to a delayed birth certificate is rebutted by contradictory evidence, and each case must be decided on its own facts with regard to the sufficiency of the evidence presented as to the petitioner's birth. *See Matter of Serna,* 16 I&N Dec. 643 (BIA 1978).

In the present matter, the applicant's amended birth certificate was registered on July over a year after the applicant's birth, and it contains paternity information not present in the birth certificate registered within three weeks of his birth. To explain the discrepancies and the delay in amending the birth certificate to include paternal information, the applicant asserts that under Mexican law at the time of the applicant's birth, a birth certificate for a child born to a single mother would not contain the father's name, and the father's name would only be added to a corrected or amended birth certificate later if the father legitimated the child. The applicant asserts that this is what happened in his case, as demonstrated by the June marriage certificate for his mother and and his July amended birth certificate reflecting acknowledgment of paternity. The applicant asserts further that his

[7] Copies of the immigrant visa application, the affidavit from , and the birth certificate were provided to the applicant in our August 20, 2014 Notice of Derogatory Evidence.

amended birth certificate is recognized by Mexican civil authorities as his legal birth certificate; his birth certificate was superseded by the amended birth certificate and is void; and the birth certificate should be afforded little or no evidentiary weight in his citizenship case. To corroborate his assertions, the applicant submits a June 2009 Canadian Immigration and Refugee Board document reflecting, in pertinent part, that in the State of , "it is possible for a child registered with the name of only one parent to be acknowledged later by the other parent;" "only the mother's name appears on the [birth] certificate when the mother is a single parent"; and under the law, both parents must list their names on their child's birth certificate if they are married.

The applicant was born in the State of Baja California, Mexico. The evidence discussing legal procedures in the State of Mexico is therefore not applicable to his case. Furthermore, even if the law in the State of Baja, California allows for the amendment of paternal information on birth certificates once a father legitimates his child, in the present matter the record fails, overall, to establish that is the applicant's biological father. The record contains no indication that civil registry personnel independently examined or determined paternity over the applicant prior to amending his birth certificate.

Furthermore, the claim that is the applicant's biological father conflicts materially with information contained in the applicant's immigrant visa application, and in an affidavit from On the applicant's January 7, 1958 immigrant visa application, signed by the applicant's mother under oath, the applicant's mother responded to question #28 asking for the name and address of the applicant's father with the response, "unknown." Moreover, stated, in pertinent part, in an Affidavit of Support that he signed under oath on December 12, 1957, that "it is his desire and intention to have come to and reside with him in the United States of America his step-children: [other child's name deleted for privacy purposes], born at [other child's city, state and date of birth deleted for privacy purposes], and born at Mexico, on March

The applicant's assertion, through counsel, that Affidavit of Support lists the names of his stepchild(ren) independently of the applicant's name, and that the affidavit does not, on its face, state that the applicant is his stepchild, is unpersuasive. Moreover, the applicant's mother completed the applicant's visa application after her marriage to and more than six months after the issuance of the applicant's amended birth certificate. Thus, assertions that her response regarding the applicant's father's name and address as "unknown" could be "the result of inadvertent errors or misunderstandings," or his mother's "taking care to have her response to an official government form match the 1956 birth certificate," are unpersuasive. Similarly, without supporting evidence, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. See *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Overall, the applicant has failed to resolve inconsistencies in the record regarding his father's paternity, and the record fails to demonstrate, by a preponderance of the evidence, that the

applicant's biological father is , or that the applicant was born to a U.S. citizen father. The applicant therefore does not meet requirements under former section 309(a) of the Act and we, therefore, need not address the applicant's eligibility under former and section 301(a)(7) 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

It is the applicant's burden to establish eligibility for the immigration benefit sought. *See* Section 291 of the Act. Here, that burden has not been met.

ORDER: The appeal is dismissed. The application remains denied.