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

[redacted]

DATE: OCT 27 2014 OFFICE: SACRAMENTO, CA 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 (1960/1972)

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 Sacramento, 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 record reflects that the applicant was born in Mexico in 1960.[1] His mother was born in Mexico on October 28, 1944, and she acquired U.S. citizenship at birth. His father became a naturalized U.S. citizen on June 24, 1994. 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 that the applicant failed to establish that his mother was physically present in the United States for the requisite time period set forth in current section 301(g) of the Act, 8 U.S.C. § 1401(g). The application was denied accordingly. Through counsel, the applicant timely appealed the director's decision to our office. He submits three affidavits from family members on appeal; however, he provides no brief and makes no assertions contesting the director's finding, or stating the basis of his appeal.

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

The regulation at 8 C.F.R. § 103.3(a)(1)(v) states in pertinent part:

> *Summary dismissal.* An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

Here, the applicant failed to identify any erroneous conclusion of law or statement of fact in the director's decision. The applicant's appeal shall therefore be summarily dismissed.

Even if the applicant had identified an erroneous conclusion of law or statement of fact in the director's decision on appeal, his appeal would have been dismissed based on the applicant's failure to establish that his mother was physically present in the United States for the period of time required under the Act.

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*

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[1] Although the applicant states on the Form N-600 that he was born on August the English translation of his birth certificate contained in the record reflects that he was born in Mexico on January and the copy of his Mexican birth certificate does not contain a legible year of birth.

and Naturalization Service, 247 F.3d 1026, 1028 n.3 (9th Cir. 2001). Former section 301(a)(7) of the Act applies to the applicant's acquisition of citizenship claim.[2]

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

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 "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

To establish 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 were after his mother turned 14 on October 28, 1958, the applicant submits Social Security Administration earnings evidence and affidavits. The Social Security Administration evidence reflects that the applicant's mother earned income in the United States between 1968 and 1970. The applicant's mother, maternal grandmother, and maternal aunt) state in affidavits dated April 5, 2014, that the applicant's mother resided with her grandmother at in Los Angeles, California from 1965 to 1971. The applicant's maternal aunt, , states in a July 6, 2013 letter that the applicant's mother lived with her at Los Angeles, California and at in Los Angeles from 1965 to 1975. states in a letter dated February 26, 2014, that he has known the applicant's mother since 1968, and that she lived at in Los Angeles, California with his wife, The record also contains the applicant's parent's marriage certificate reflecting that his parents married in Mexico on June 29, 1965, and indicating

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[2] The director erroneously applied current section 301(g) of the Act to the applicant's case. 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. Current 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).

that the applicant's mother's address at the time was in Los Angeles, California.[3]

None of the evidence demonstrates that the applicant's mother was physically present in the United States prior to the applicant's birth in August 1960. The applicant therefore failed to establish, by a preponderance of the evidence, that his mother was physically present in the United States for the time period required under former section 301(a)(7) of the Act. Moreover, even if the applicant had established that he was born in January 1972, the evidence would fail to establish that his mother was physically present in the United States for 10 years prior to that date, and would, at best, establish his mother's physical presence in the United States for only seven years between 1965 and 1972.[4]

Conclusion

The applicant has failed to identify any erroneous conclusion of law or statement of fact in the director's decision. *See* 8 C.F.R. § 103.3(a)(1)(v). The appeal is therefore dismissed.

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

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[3] Other evidence contained in the record refers to the applicant's mother's current place of residence; and to the applicant's residence, marriage, vocational training and character. It is therefore not relevant to the applicant's acquisition of citizenship claim.

[4] The affidavits in the present matter also have diminished evidentiary weight in that they are vague and lack probative details regarding the applicant's mother's physical presence in the United States and the affiants' source of their knowledge. *See Matter of E-M-*, 20 I&N Dec. 77 (Comm'r. 1989) (In ascertaining the evidentiary weight of affidavits, the Service must determine the basis for the affiant's knowledge of the information to which he is attesting; and whether the statement is plausible, credible, and consistent both internally and with the other evidence of record.)