



U.S. Citizenship
and Immigration
Services

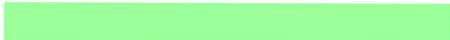
(b)(6)



Date: **OCT 27 2014**

Office: EL PASO, TX

FILE: 

IN RE: Applicant: 

APPLICATION: Application for Certificate of Citizenship under former Section 301 of the Immigration and Nationality Act; 8 U.S.C. § 1401 (1981).

ON BEHALF OF APPLICANT:

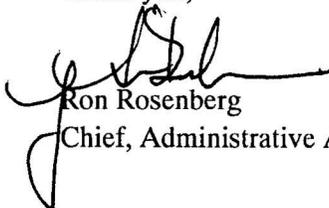


INSTRUCTIONS:

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 El Paso, Texas Field Office (the director) denied the Application for Certificate of Citizenship (Form N-600) and the matter came before the Administrative Appeals Office (AAO) on appeal. The appeal was rejected as untimely filed. The director denied a Motion to Reopen and Reconsider and the matter is now again before the AAO on appeal. The appeal will be dismissed.

Pertinent Facts and Procedural History

The applicant was born in Mexico on February 12, 1981. His father, [REDACTED] was born in Mexico on December [REDACTED] but acquired U.S. citizenship at birth through his U.S. citizen parent. The applicant's parents were married in 1977. The applicant's mother, [REDACTED] is not a U.S. citizen. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship at birth through his father.

The director denied the application upon finding that the applicant could not establish that his father was physically present in the United States for ten years prior to his birth. *See Director's Decision*, dated August 8, 2011. The applicant's appeal was rejected as untimely filed. *See AAO's Decision*, dated February 28, 2012.

On March 3, 2014, the director denied a motion to reopen or reconsider the application finding that the applicant had not established that his father was physically present in the United States for the required ten years prior to the applicant's birth. *See Director's Decision*, dated March 3, 2014.

The applicant, through counsel, appeals the director's decision stating that he has submitted sufficient evidence of his father's physical presence. *See Statement of the Applicant on Form I-290B, Notice of Appeal or Motion*. Counsel indicates that a brief would be submitted within thirty days of the appeal but, to date, none has been received in our office.

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 1981. 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 for ten years prior to his birth in 1981. The record, however, does not support the applicant's claim.

Depending on the specificity, detail, and credibility of a letter or statement, U.S. Citizenship and Immigration Services (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 of Immigration Appeals 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 documentary evidence submitted by the applicant includes a rent receipt, a pay stub and statements from his father's acquaintances and coworkers. The rent receipt and pay stub, and information in some of the statements do not pertain to the years prior to the applicant's birth in 1981, and are therefore not relevant to this adjudication. The statements from the applicant's father's acquaintances and coworkers state that the declarant met the applicant's father or has

known the applicant's father, but do not contain any information regarding the applicant's father's residence or physical presence in the United States prior to 1981. Although the declarants state that the applicant's father traveled to the United States to help his father and work in seasonal jobs either in the 1960s or the 1970s, the statements lack probative details regarding the amount of time the applicant's father spent in the United States or the frequency of his trips. The statements submitted by Mr. [REDACTED] and Ms. [REDACTED] refer to specific years that the applicant's father was present in the United States prior the applicant's birth; however, the statements lack sufficient detail to establish that the applicant's father was physically present in the United States for a period totaling not less than ten years prior to 1981.

The preponderance of the evidence in the record does not establish that the applicant's father was physically present in the United States for a period or periods totaling not less than ten years prior to the applicant's date of birth, at least five of which were after the applicant's father turned 14 on December 20, 1969.

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.