



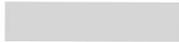
U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **APR 02 2015**

Office: SAN DIEGO

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 (1969)

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 San Diego, California, Field Office denied the Application for Certificate of Citizenship (Form N-600) and the matter came before the Administrative Appeals Office (AAO) on appeal. The AAO dismissed the appeal on April 8, 2014. The applicant now files a motion to reopen and reconsider the AAO's decision. The motion is granted and the prior AAO decision is affirmed.

Pertinent Facts and Procedural History

The applicant was born in Mexico on [REDACTED] to married parents, who are listed on his birth certificate as [REDACTED] and [REDACTED]. The applicant claims that his father was born in Arizona on [REDACTED] and was a U.S. citizen at the time of his birth. There is no evidence that the applicant's mother was 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 father.

The director found that the applicant failed to establish that his father was born in the United States and was physically present in the United States for the requisite period prior to the applicant's birth, as required by former section 301(a)(7) of the Act. The application was denied accordingly. *See Decision of the Field Office Director* dated December 9, 2013. On appeal we determined that the applicant had failed to establish by a preponderance of the evidence that his father had been born in United States because the names on various documents that the applicant submitted to identify his father were inconsistent; that affidavits written by the applicant's siblings had little probative value because they were not based on personal and direct knowledge and provided only the family history of the father's birth; and that an affidavit by the applicant's uncle was not accompanied by an English translation and therefore could not be considered. *See Decision of the AAO* dated April 8, 2014.

On motion the applicant submits a translated affidavit by his uncle.

Applicable Law

The AAO conducts appellate review on a de novo basis. *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. *Chau v. INS*, 247 F.3d 1026, 1028 n.3 (9th Cir. 2001). The applicant in this case was born in 1969. Accordingly, former section 301(a)(7) of the Act controls his claim to acquired citizenship.¹

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) remained the same after the re-designation and until 1986.

Former section 301(a)(7) of the Act stated 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. . . .

The applicant bears the burden of proof to establish the claimed citizenship by a preponderance of the evidence. Section 341 of the Act, 8 U.S.C. § 1452; 8 C.F.R. § 341.2(c). The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). In evaluating the evidence, *Matter of E-M-* also stated that "[t]ruth is to be determined not by the quantity of evidence alone but by its quality." *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, U.S. Citizenship and Immigration Services (USCIS) must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if USCIS has some doubt as to the truth, if the applicant submits relevant, probative, and credible evidence that leads the agency to believe that the claim is "probably true" or "more likely than not," the applicant has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (defining "more likely than not" as a greater than 50 percent probability of something occurring). If USCIS can articulate a material doubt that leads it to believe that the claim is probably not true, then USCIS may deny the application. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

Strict compliance with statutory prerequisites is required to acquire citizenship. *See Fedorenko v. U.S.*, 449 U.S. 490, 506 (1981).

The Applicant's Father's Identity

To demonstrate that his father was born on [REDACTED] in the State of Arizona, the applicant submitted a birth certificate of a child named [REDACTED] born to parents [REDACTED] and [REDACTED]. The applicant claims that [REDACTED] and his father, [REDACTED] is the same person and that the hospital recorded the names of his father and grandfather incorrectly. The applicant notes that the name of his father's mother, [REDACTED], appears on his birth certificate as paternal grandmother and his parents' marriage certificate as the mother of the groom. The applicant submitted to the record affidavits from his siblings and from his uncle, an Extract of Records from the Social Security Administration (SSA), his father's death certificate, and a declaration from a private investigator.

Depending on the specificity, detail, and credibility of an affidavit, letter or statement, 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). The Board also stated, "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).

As noted above, in dismissing the appeal we found that the applicant had not established by a preponderance of the evidence that [REDACTED] and [REDACTED] are the same person, and that his father was born in the United States. We determined that the affidavits by the applicant's siblings were deficient because they provide only the "family history" of the father's birth and that none of the siblings had direct personal knowledge of the circumstances of the father's birth. *See* 8 C.F.R. § 103.2(b)(2). We concluded that the affidavits had little probative value in demonstrating that [REDACTED] and [REDACTED] are the same person, and that the probative value of the name [REDACTED] appearing on the applicant's birth certificate and his parents' marriage certificate is diminished in light of the documentary evidence of record.

We further noted that there were discrepancies in dates and names when comparing the birth certificate of [REDACTED] the California Identification Card and death certificate of the applicant's father, the extract from SSA records, and other documents submitted to the record, and that the applicant had not explained these discrepancies. It is incumbent upon the petitioner 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).

On motion the applicant submits an English translation of the affidavit from his uncle, who claims that his sister's husband, who is the father of the applicant, had told the uncle that he had been born in the United States and had lived here until shortly before the applicant was born in Mexico. The affidavit, however, does not overcome the deficiencies we noted in dismissing the applicant's appeal because the applicant's uncle does not have personal and direct knowledge of the circumstances of the applicant's father's birth. The applicant has not submitted relevant, probative and credible evidence that his father is the same [REDACTED] who was born on [REDACTED] in Arizona, thus a United States citizen. Further, even had the applicant established that his father was a U.S. citizen at the time of his birth, he has failed to demonstrate that his father had the required years of physical presence to transmit U.S. citizenship to him.

The Applicant's Father's Physical Presence in the United States

The applicant must establish, by a preponderance of the evidence, that his father was physically present in the United States for no less than 10 years before the applicant's birth on [REDACTED], and that at least five of these years were after his father's 14th birthday. On the Form N-600, the applicant claimed that his father resided in the United States from the time of his father's birth in [REDACTED] until [REDACTED]. According to the private investigator the applicant's father was issued a social security number in California during the years of 1954-1955. Birth certificates of the applicant's siblings indicate births in California in 1964, 1966 and 1967, and the siblings stated that it was

understood when they were growing up that their father had never lived in Mexico until moving the family there in 1969.

The applicant has failed to establish by a preponderance of the evidence that his father was physically present in the United States for 10 years before the applicant's birth in [REDACTED]. The affidavits of the applicant's siblings and their birth certificates, although listing the father's place of residence as California, do not establish 10 years of physical presence in the United States for the applicant's father. The translation of the affidavit by the applicant's uncle, submitted on motion, states that the uncle had been told by the applicant's father that he had always lived in the United States until shortly before the applicant's birth, but the affidavit provides no detail, firsthand knowledge, or supportive evidence to establish the father's physical presence in the United States.

The applicant has submitted no documentary evidence of his father's physical presence in the United States, despite his father's claimed residence in California for 32 years prior to the applicant's birth. Consequently, the applicant has failed to meet his burden of proof.

Conclusion

It is the applicant's burden to establish the claimed citizenship by a preponderance of the evidence. Section 341(a) of the Act, 8 U.S.C. § 1452(a); 8 C.F.R. § 341.2(c). Here, that burden has not been met.

ORDER: The motion is granted. The AAO's prior decision dismissing the appeal is affirmed.