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

U.S. Citizenship and Immigration Services

(b)(6)

DATE: AUG 1 8 2015

FILE #:
APPLICATION RECEIPT #:

IN RE: Applicant:

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

ON BEHALF OF APPLICANT:

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Imperial, California, denied the application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born in Mexico on The Field Office Director stated that the parents of the applicant's father were both born in the United States, and therefore concluded that the applicant's father was a U.S. citizen at the time of the applicant's birth. The applicant's mother was not a U.S. citizen. The applicant's parents were married prior to the applicant's birth. 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 Field Office Director found that the applicant did not establish that his father had the required physical presence in the United States prior to the applicant's birth as required by former section 301(g) of the Act, in order for the applicant to acquire U.S. citizenship. The Field Office Director denied the Form N-600, Application for Certificate of Citizenship (N-600), accordingly. *See Decision of the Field Office Director,* September 25, 2014.

On appeal, the applicant contends that his father did have the required physical presence in the United States prior to his birth, and submits additional evidence in support of this contention.

We conduct appellate review on a de novo basis. *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 "preponderance of the evidence" standard requires that the record demonstrate that the applicant's claim is "probably true," based on the specific facts of each case. *See 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)).

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 Accordingly, former section 301(a)(7) of the Act controls his claim to acquired citizenship.[1]

Former section 301(a)(7) of the Act stated that the following shall be nationals and citizens of the United States at birth:

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[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.

> 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. . .

Therefore, in the present matter, the applicant must establish that his father resided in the United States for ten years between his father's birth on , and the applicant's birth on and that at least five of those years followed the date on which the applicant's father turned 14 years of age.

In support of the applicant's claim that his father was a U.S. citizen and had the requisite period of physical presence in the United States for him to acquire U.S. citizenship, the applicant submitted the following documentation: copies of his father's birth certificate, indicating that his father was born in Mexico on copies of the birth certificates of the parents of the applicant's father, indicating that the mother of the applicant's father was born in in California, and the father of the applicant's father was born in in Texas; a copy of the marriage certificate of the applicant's parents, indicating that they were married in Mexico in ; a copy of the birth certificate of the brother of the applicant's father, indicating that he was born in California in a copy of the summary of earnings for the applicant's father from the social security administration, indicating his earnings from 1962 to 1997; a copy of a statement, dated December 22, 1961, indicating that the applicant's paternal grandmother was working for a farm labor contractor, and had worked for that contractor for a period of two years; documentation regarding the legal entry of the applicant's father to the United States on February 9, 1962; and copies of presentence reports for the applicant's father and the applicant, dated 1983.

The Field Office Director determined that the applicant's father acquired U.S. citizen at birth as both parents of the applicant's father were born in the United States.[2]

The record indicates that the applicant's father was admitted to the United States as a lawful permanent resident on February 9, 1962, which is years, months, and days prior to the birth of the applicant. Service records indicate that February 9, 1962 is the official date that the applicant's father entered the United States.

The applicant contends that even though the record indicates that his father entered the United States on February 9, 1962, the parents of the applicant's father brought his father to the United States as a child. In support of this contention, the applicant submits a copy of the birth certificate of the brother of his father, born in California in which indicates that the mother of the applicant's father gave birth and registered the birth in the United States in when the applicant's father

[2] We note the record does not indicate that applicant's father completed the procedures necessary to establish that he acquired U.S. citizenship from his parents prior to his death in

was 12 years of age. While this document indicates that the mother of the applicant's father was in the United States in 1957, it does not indicate that the applicant's father was in the United States in 1957.

In addition, the applicant submits a redacted copy of the 1960 federal income tax return for and " stating that was another name for his father, and was another name for his mother. The applicant states that this income tax return indicates that the parents of the applicant's father filed taxes in the United States in 1960, when the applicant's father was years of age. The applicant states that he received the redacted copy of the 1960 federal income tax return in response to a Freedom of Information Request for documentation in the record of the applicant's father, and notes that normally, the former Immigration and Naturalization Service required three to four income tax returns, thus it can be assumed that the parents of the applicant's father filed income tax returns for the years 1956 to 1960 in support of their 1961 application for a visa for the applicant's father. The applicant also submits a copy of an employment statement for the mother of the applicant's father, indicating that, as of December 1961, she was employed for two years with a farm labor contractor in California. However, neither the copy of the federal income tax return nor the employment document for the mother of the applicant's father establishes that the applicant's father was residing in the United States prior to 1962.

The applicant also submits a copy of a presentence report for the applicant's father, dated May 3, 1983. The applicant notes that the report on page 7 states that the applicant's father, from age eight to the time of the report, was a field laborer working in various parts of California, Arizona, and New Mexico, and further noting that the applicant's father was years old in 1953. However, that same report, on the same page, states that the applicant's father immigrated to into the United States on February 9, 1962, and that he "started work at an early age, eight or nine years old, in the field in Mexico." Thus, although the report states that the applicant's father began working in the fields at the age of eight, the report contains contradictory information about whether this work began in Mexico or in the United States. Furthermore, assertions that the applicant's father resided in the United States prior to February 9, 1962, are not consistent with information in the father's immigration-related applications. For instance, in the father's February 8, 1962 immigrant visa application, the father attests that he resided in Mexico since 1946, and that he had never been in the United States.

There is insufficient evidence of record indicating that the applicant's father resided in the United States at any point prior to February 9, 1962, especially when viewed in light of the information on the father's immigration-related applications. Therefore, the applicant did not establish that the his meets the physical presence requirements of former section 301(a)(7) of the Act. A person may only obtain citizenship in strict compliance with the statutory requirements imposed by Congress. *INS v. Pangilinan*, 486 U.S. 875, 885 (1988). Moreover, "it has been universally accepted that the burden is on the alien applicant to show his eligibility for citizenship in every respect." *Berenyi v. District Director, INS*, 385 U.S. 630, 637 (1967).

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 appeal is dismissed.