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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

DATE: AUG 2 6 2015

IN RE: Applicant:

APPLICATION: Form N-600, Application for Certificate of Citizenship

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, Spokane, Washington, 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 to a U.S. citizen mother and a non-U.S. citizen father. 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 mother.

The Field Office Director found that the applicant did not establish that his mother had the required physical presence in the United States prior to the applicant's birth pursuant to former section 301(g) of the Act, in order for the applicant to acquire U.S. citizenship. *See Decision of the Field Office Director*, November 24, 2014. The Field Office Director denied the Form N-600, Application for Certificate of Citizenship, accordingly. *Id.*

On appeal, the applicant states that his mother was physically present in the United States in and submits evidence to show that his mother was physically present in the United States for those years. The applicant contends that based on this evidence, his mother fulfilled the physical presence requirement, and therefore he acquired citizenship under former section 301(a)(7) of the Act.

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 1967. Accordingly, former section 301(a)(7) of the Act controls his claim to acquired citizenship.[1]

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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.

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. . .

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

The record indicates that the mother of the applicant's mother was born in Texas. The record further indicates that the applicant's mother, who was born in Mexico, acquired U.S. citizenship through her mother, and the applicant's mother was issued her certificate of citizenship on

On appeal, the applicant submits an affidavit from his mother, dated December 30, 2014, in which his mother states that she began traveling frequently between Mexico and Texas in , that she married in , and that she and her husband moved from Mexico to the United States in The mother adds that she lived and worked in Texas until that she became pregnant in that the child was born in Mexico in that she returned to the United States at the beginning of until and that she was also in the United States from until She then returned to Mexico, and gave birth to the applicant in

In support of his mother's claims of physical presence in the United States attested to in her affidavit, the applicant submits copies of two Applications for Nonresident Alien's Mexican Border Crossing Cards, Form I-190, dated and and a copy of a Form I-213, Record of Illegal Alien Apprehended or Located for the applicant's mother, dated

The applicant states that his mother was physically present in the United States in a span of more than five years, and therefore contends that his mother had the requisite period of physical presence in the United States for him to acquire U.S. citizenship.

As stated above, the applicant's mother claims in her December 30, 2014, affidavit that she was physically present in the United States for time periods between However, in a February 22, 2008 affidavit, the mother contends that in the fall of she lived in Texas. In addition, the mother's aunt claims in another affidavit that the applicant's mother would go to Del Rio, Texas, beginning when she was eight years old until she married at fifteen years of age. *Affidavit of applicant's mother's aunt,* May 6, 2008. This account is inconsistent with the mother's own statements, wherein she indicates she began traveling between the United States and Mexico in when she was fourteen to fifteen years old, and her earlier assertion that she lived in Texas in

the fall of when she was eleven years old. The record does not contain an explanation or evidence reconciling these inconsistencies. The applicant must resolve any inconsistencies in the record by independent, objective evidence, and attempts to explain or reconcile these inconsistencies, without evidence in support, will not suffice. *Matter of Ho,* 19 I&N Dec. 582 (BIA 1998). Aside from the border crossing cards and the Form I-213, the record lacks further supporting documentation to substantiate the statements of the applicant's mother in her affidavit of December 30, 2014.

We note that the applicant's mother does not assert that she was physically present in the United States for five whole years between as she indicates that she traveled between Mexico and the United States during this time. Moreover, even if the applicant could show that his mother was physically present in the United States for a period of five years between it would not be sufficient to establish that his mother had the requisite period of physical presence in the United States for him to acquire U.S. citizenship. Former section 301(a)(7) of the Act requires that the applicant demonstrate that his mother resided in the United States for ten years between her birth on and the applicant's birth on

As discussed above, the record includes a statement from the applicant's mother, dated February 22, 2008, in which she states that she lived in Texas in she would go to Mexico for visits, and then she went to Mexico to get married. However, this statement lacks detail regarding the amount of physical presence she acquired in the United States, and is contradicted by her affidavit of December 30, 2014, in which she indicates that she first went to in The applicant's mother's aunt's affidavit similarly lacks detail on the amount of physical presence the applicant's mother acquired in the United States, and is not substantiated by any further affidavits or documentary evidence. We therefore affirm the Field Office Director's finding that the applicant has not demonstrated that his mother meets the physical presence requirements in former section 301(a)(7) of the Act.

Strict compliance with statutory prerequisites is required to acquire citizenship. *See Fedorenko v. U.S.*, 449 U.S. 490, 506 (1981). The record thus does not demonstrate that the applicant's mother meets the physical presence requirements of former section 301(a)(7) of the Act.

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.