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**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF R-V-G-

DATE: DEC. 22, 2015

APPEAL OF EL PASO FIELD OFFICE DECISION

APPLICATION: FORM N-600, APPLICATION FOR CERTIFICATE OF CITIZENSHIP

The Applicant, a native and citizen of Mexico, seeks a Certificate of Citizenship. *See* Immigration and Nationality Act (the Act) § 301, 8 U.S.C. § 1401 (1961) (amended by Pub. L. No. 95-432, 92 Stat. 1046 (1978)). The Director, El Paso Field Office, denied the application. The matter is now before us on appeal. The appeal will be dismissed.

The Applicant was born in Mexico on [REDACTED]. The Applicant's parents were never married. The Applicant's father is a U.S. citizen, as he was born in the United States on [REDACTED] 1948. The Applicant's mother was born in Mexico and is not a U.S. citizen. The Applicant seeks a certificate of citizenship indicating that he acquired U.S. citizenship at birth through his father under former section 301(a)(7) of the Act.

On August 20, 2015, the Director denied the Applicant's Form N-600 concluding that the Applicant did not establish that his U.S. citizen father was physically present in the United States for 10 years prior to his birth, as required by former section 301(a)(7) of the Act. On appeal, the Applicant asserts that the 10 year physical presence requirement of former section 301(a)(7) of the Act is unconstitutional and therefore, it should not be applied to him. In the alternative, the Applicant states that the evidence he submitted is sufficient to satisfy the physical presence requirements of former section 301(a)(7) of the Act.

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, 1029 n.3 (9th Cir. 2001) (internal quotation marks and citation omitted). The Applicant was born on [REDACTED]. Accordingly, former section 301(a)(7) of the Act controls his claim to citizenship.<sup>1</sup>

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:

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<sup>1</sup> 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 section 301(a)(7) remained the same after the re-designation and until 1986.

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[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.

The record does not indicate that the Applicant's U.S. citizen father served in the United States Armed Forces at any time. Therefore, the Applicant must establish that his father was physically present in the United States or its outlying possessions for a period or periods totaling not less than 10 years before the Applicant was born, at least five of which were after the father's 14th birthday on [REDACTED].

The Director found that the Applicant is not eligible for citizenship under former section 301(a)(7) of the Act because he did not submit sufficient evidence to show that his father was physically present in the United States for not less than 10 years, at least five of which were after his 14th birthday.

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 a foreign national 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 Applicant asserts on appeal that the physical presence requirement under former section 301(a)(7) of the Act is unconstitutional. In support of this assertion, the Applicant cites the Second Circuit Court of Appeals decision in *Morales-Santana v. Lynch*, 792 F.3d 256 (2nd Cir. 2015). In this case, the Second Circuit held that that the gender-based difference in sections 309(a) and (c)<sup>2</sup> of the Act, 8 U.S.C. § 1409(a) and (c), which transmits citizenship to a child of an unwed mother but has more stringent requirements applicable to unwed fathers, violated the guarantee of equal protection of the Fifth Amendment of the U.S. Constitution.<sup>3</sup> The Applicant acknowledges that his case arises within the jurisdiction of the Fifth Circuit Court of Appeals, which has not addressed this issue. Nevertheless, he urges us to follow the reasoning of the Second Circuit Court, as it was recently adopted by the U.S. District Court in the Western District of Texas in *Villegas-Sarabia v. Johnson*, 2015 WL 4887462 (W.D. Tex. 2015).

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<sup>2</sup> Section 309(c) provides that a person born outside the United States to an unwed mother shall be held to have acquired at birth the nationality status of the mother, if the mother had the nationality of the United States at the time of such person's birth, and if the mother had previously been physically present in the United States or one of its outlying possessions for a continuous period of one year.

<sup>3</sup> We note that this opinion has been amended and superseded by *Morales-Santana v. Lynch*, 804 F.3d 520 (2nd Cir. 2015).

We are bound by the Act, agency regulations, precedent decisions of the agency, and published decisions from the circuit court of appeals where the action arose. See *N.L.R.B. v. Ashkenazy Property Management Corp.*, 817 F.2d 74, 75 (9<sup>th</sup> Cir. 1987). We are not bound to follow the published decision of a U.S. District Court in cases arising within the same district. See *Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Moreover, we lack jurisdiction to rule on the constitutional issue raised by the Applicant. See, e.g., *Matter of Fuentes-Campos*, 21 I&N Dec. 905, 912 (BIA 1997) (like the Board of Immigration Appeals (the Board), we do not have appellate jurisdiction over constitutional issues.) In light of the above, we may not consider the constitutionality of former section 301(a)(7) of the Act. We may only determine whether the Applicant meets the requirements contained in the language of the statute by establishing that his U.S. citizen father was physically present in the United States for 10 years prior to his birth.

On this issue, the Applicant asserts that the evidence of his father's physical presence in the United States he presented is sufficient to satisfy the requirement of former section 301(a)(7) of the Act. This evidence consists of birth, baptism, and death certificates, social security earnings statements for the years 1965-1994, printouts from a genealogy resources website, a letter, and affidavits. After a review of the record, we also find that the evidence the Applicant submitted is insufficient to show that his father was physically present in the United States for not less than 10 years, five of which were after his 14th birthday.

The birth, baptismal, and death certificates establish that the Applicant's father was physically present in the United States between his birth in Texas in 1948 and his baptism in 1951. The social security statements show that he was present in the United States between 1965 and 1968. In addition, the letter written from California by the Applicant's father to the Applicant's mother's sister in 1965 indicates that his father was physically present in the United States at some point in 1965. This evidence establishes that the Applicant's father was likely present in the United States for a period of 3 years after his 14th birthday, and before the Applicant was born. Moreover, the Applicant submitted printouts from a genealogy resources website, referencing the U.S. Public Records Index for the years 1950-1993, as proof of his father's physical presence in the United States. The printouts show that an individual with the Applicant's father's name and date of birth lived in Texas, California and Iowa sometime between 1950 and 1993. However, there is no additional identifying information, such as a social security number or parents' names, to establish that the records pertain to the Applicant's father. In addition, even if the records contained information relating to the Applicant's father, they do not establish the specific time periods during which he was physically present in the United States prior to the Applicant's birth.

The Applicant also submitted two affidavits attesting to his father's physical presence in the United States. In the first affidavit, his mother's sister-in-law states that she met the Applicant's father in Mexico sometime in 1967. She indicates she learned at that time that the Applicant's father was a U.S. citizen, that he had always lived in the United States, that as a young adult he traveled around the country to work in the fields, and that he met the Applicant's mother while in the United States. The second affidavit is from the daughter of the first affiant. The daughter states that she met the Applicant's father in Mexico when she was seven years old. She claims that she remembers hearing

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that the Applicant's father was a U.S. citizen and that he had always lived in the United States. The information in the affidavits is not based on the affiants' personal knowledge of the Applicant's father's residence in the United States. Rather, the affiants are relating the information they learned from someone else. They do not identify the source of this information, nor is there any other evidence to corroborate the affiants' claims. Given the lack of the affiants' personal knowledge about the Applicant's father's residence in the United States and the lack of corroborating evidence, we find that the affidavits cannot carry significant evidentiary weight.

Depending on the specificity, detail, and credibility of an affidavit, letter or statement, U.S. Citizenship and Immigration Services (USCIS) may give the document more or less persuasive weight in a proceeding. In addition, 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) (citations omitted). However, the Board has also held that the introduction of corroborative testimonial and documentary evidence, where available, is not only encouraged, but required. *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).

In light of the above, we find that the evidence the Applicant submitted is insufficient to establish that his father was physically present in the United States for not less than 10 years, five of which were after his 14th birthday.

Additionally, because the Applicant was born out of wedlock, he must satisfy the provisions set forth in former section 309(a) of the Act, 8 U.S.C. § 1409(a), which provided, in pertinent part:

The provisions of . . . section 301(a) . . . shall apply as of the date of birth to a child born out of wedlock on or after the effective date of this Act, if the paternity of such child is established while such child is under the age of twenty-one years by legitimation.

Former section 309(a) of the Act applies to individuals who had attained 18 years of age on November 14, 1986, the date of the enactment of the Immigration and Nationality Act Amendments of 1986, Pub. L. No. 99-653, 100 Stat. 3655 (1986). *See* Section 8(r) of the Immigration Technical Corrections Act of 1988, Pub. L. No. 100-525, 102 Stat. 2609 (1988). Because the Applicant was over 18 years of age on November 14, 1986, he must show that his paternity was established by legitimation before his 21st birthday on [REDACTED]

We find that the record does not establish that the Applicant's paternity was established by legitimation under the law of the Applicant's or his father's domicile prior to the Applicant's 21st birthday. The record contains the Applicant's Mexican birth certificate, an affidavit from his step-brother born in 1963, and a photograph.

Although the Applicant has submitted his Mexican birth certificate, the certificate is not accompanied by a certified English translation. Any document containing a foreign language that is

submitted to USCIS must be accompanied by a full English translation, which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. 8 C.F.R. § 103.2(b)(3). Because the Applicant did not submit a certified translation of his birth certificate, we are unable to determine whether the document supports his claim of legitimation.

Furthermore, the Applicant has submitted an affidavit executed by his step-brother. The Applicant's step-brother states that although the Applicant's parents never married, the Applicant's father frequently visited him in Mexico and gave money to the Applicant's mother for his support. The step-brother adds Applicant's father took him on vacation in Mexico when the Applicant was 13 years old. The information in the affidavit indicates that the Applicant's father may have maintained some contact with him and occasionally gave his money to his mother to support him financially. However, there is no evidence demonstrating that these actions alone constitute acknowledgement of a child through legitimation under the Mexican law. When foreign law is required to establish eligibility for an immigration benefit, the application of the foreign law is a question of fact, which must be proved by the applicant. See *Matter of Kodwo*, 24 I&N Dec. 479, 482 (BIA 2008)(citing *Matter of Fakalata*, 18 I&N Dec. 213 (BIA 1982); see also *Matter of Annang*, 14 I&N Dec. 502 (BIA 1973)).

Although the Applicant has submitted some evidence to show that his father was physically present in Texas and California at different times, including the father's birth and death certificates and a letter he mailed from California in 1965, this evidence is insufficient to show that the Applicant's father resided<sup>4</sup> in either of these states before the Applicant's 21<sup>st</sup> birthday. Therefore, the Applicant has not shown that his paternity was established by legitimation in his or his father's domicile.

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.

Cite as *Matter of R-V-G-*, ID# 16388 (AAO Dec. 22, 2015)

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<sup>4</sup> The term "residence" means the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent. Section 101(a)(33) of the Act, 8 U.S.C. § 1101(a)(33).