(b)(6)

U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF M-A-R-O-

DATE: APR. 8, 2016

APPEAL OF HARLINGEN, TEXAS 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) section 301(a)(7), 8 U.S.C. § 1401(a)(7), *amended by* Act of October 10, 1978, Pub. L. No. 95-432, 92 Stat. 1046. An individual born outside the United States who acquired U.S. citizenship at birth, or who automatically derived U.S. citizenship after birth but before the age of 18, may apply to receive a Certificate of Citizenship. For an individual claiming to be a U.S. citizen at birth, and who was born to married parents between December 24, 1952, and November 14, 1986, one parent must be a U.S. citizen parent, and that parent must have been physically present in the United States for 10 years (with at least five years occurring after the age of 14) before the individual's birth.

The Field Office Director, Harlingen, Texas, denied the application. The Director concluded that the Applicant did not establish that his U.S. citizen father was physically present in the United States for 10 years before the Applicant's birth, as required by section 301(a)(7) of the Act.

The matter is now before us on appeal. In the appeal, the Applicant states that his brothers obtained Certificates of Citizenship based on the same evidence he submitted in the instant proceedings. He further asserts that the Director did not give proper weight to the testimony provided by his father and the affidavits the Applicant submitted to establish his father's physical presence in the United States. The Applicant also claims that the Director erroneously concluded that the earnings reported by the Applicant's father for the years 1955-1965, as reflected on the social security statement, were equivalent to only four years of his physical presence in the United States.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

The record reflects that the Applicant was born on [redacted] in Mexico to married parents. The Applicant's father was born in Mexico on [redacted] but acquired U.S. citizenship at birth through his father. The Applicant's mother was born in Mexico and is not a U.S. citizen. The Applicant became a lawful permanent resident on February 28, 1975. The Applicant seeks a Certificate of Citizenship indicating that he acquired U.S. citizenship at birth from his father pursuant to 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] outside the United States, to married parents, one of whom was a U.S. citizen and the other a foreign national. Accordingly, the Applicant's citizenship claim falls within the provisions of former section 301(a)(7) of the Act, which provided:

> [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.

II. ANALYSIS

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).

At issue in these proceedings is whether the Applicant has shown that his father was physically present in the United States for at least 10 years before the Applicant's birth on [redacted] at least five of which were after the father's 14th birthday on [redacted] as required by former section 301(a)(7) of the Act.

The Director determined that the testimony of the Applicant's father, the social security statement showing that he worked in the United States, and affidavits attesting to his physical presence in the United States between 1955 and 1965 were insufficient to establish that the Applicant's father was physically present in the United States for 10 years.

The Applicant asserts on appeal that the evidence he submitted, in addition to his father's testimony, satisfactorily demonstrates that his father was physically present in the United States for 10 years before the Applicant's birth.

This evidence includes, but is not limited to: birth and marriage certificates, a copy of the father's Certificate of Citizenship; the father's social security earnings statement for the years 1955-2000; and affidavits. The entire record was reviewed and considered in rendering a decision on appeal. Upon review, we conclude that the evidence the Applicant submitted is insufficient to show that his

father was physically present in the United States for the 10 years required under former section 301(a)(7) of the Act and, thus, that he acquired U.S. citizenship at birth from his father.

As a preliminary matter, we note that the fact that the Applicant's brothers may have obtained Certificates of Citizenship in different proceedings is irrelevant to the matter before us. Each application for a Certificate of Citizenship constitutes a separate proceeding with a separate record, and must be evaluated on the basis of the facts and evidence presented. Moreover, in making a determination of statutory eligibility, we are limited to the information in the record of proceedings before us. *See* 8 C.F.R. § 103.2(b)(16)(ii).

A. Physical presence

As reflected in the Director's decision, the Applicant's father testified during the interview in connection with the Form N-600 that he first arrived in the United States in 1955 from Mexico. He took up residence in Texas and subsequently obtained a Certificate of Citizenship on June 28, 1955. The only primary evidence of the father's physical presence in the United States between 1955 and 1965 is the social security earning statement showing the father's reported annual income for that time period. This income ranges from $240 in 1955 to $1476 in 1965. The Director determined that the income reported by the Applicant's father was equivalent to four years of his physical presence in the United States. The Applicant avers on appeal that this determination is incorrect, but offers no evidence to show the error in the Director's calculation. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

We agree with the Director that the social security statement alone is insufficient to establish that the Applicant's father was physically present in the United States between 1955 and 1965. According to the U.S. Bureau of Labor Statistics,[1] the $240 income reported by the Applicant's father in 1955 is equivalent to approximately $2,125 today. Similarly, the income of $328 reported by the Applicant's father for the year 1957 is comparable to $2,770 today. We find that the minimal annual income reported by the Applicant's father between 1955 and 1965 does not support the Applicant's claim of his father's physical presence in the United States during this time period. Therefore, the evidence that the Applicant's father worked in the United States between 1955 and 1965, without more, does not establish that he was also physically present in the United States for the full 10 years before the Applicant's birth in 1965, as required by former section 301(a)(7) of the Act.

The remainder of the evidence the Applicant submitted to establish his father's physical presence in the United States consists of affidavits. When affidavits are presented to establish eligibility, they must overcome the unavailability of both primary and secondary evidence. 8 C.F.R. § 103.2(b)(2). Further, before submitting affidavits, an applicant must demonstrate that primary or secondary evidence does not exist or cannot be obtained. *Id.* Here, the Applicant has submitted his father's

[1] http://www.bls.gov/data/inflation_calculator.htm.

social security statement for the years 1955-1965, but he has not shown that other documents pertaining to the father's presence in the United States during this time period, such as residence, employment, or tax records, were unavailable or did not exist.

The Applicant's father testified that he resided in the United States continuously since June 1955 and only traveled to Mexico on the weekends to visit his family. However, the Applicant does not offer additional evidence, other than the social security statement to support his father's testimony. The Applicant's mother states in her affidavit that she has known the Applicant's father since July 1960 and that they were married in Mexico in 1963. She further states that the Applicant's father never lived in Mexico since their marriage and worked on a ranch in Texas. The Applicant's mother does not provide details regarding her spouse's employment and residence in the United States. Further, because the Applicant's mother indicates she met the Applicant's father in 1960, she cannot attest, based on personal knowledge, to his presence in the United States before 1960. The Applicant has also submitted an affidavit by his aunt who has been residing in the United States since 1957. The aunt states that the Applicant's father has lived and worked in the United States in the agricultural industry since June 1955. However, the aunt's statement is not detailed and it is not supported by additional evidence of the claimed relationship, residence or employment. The Applicant has submitted three more affidavits, purportedly from his father's co-workers. One of the affiants states that he and the Applicant's father worked together on a Texas ranch in 1955, and that they maintained contact since that time. Another co-worker states that he had known the Applicant's father since 1954 and worked with him in agriculture, but does not specify the dates of this employment. The third co-worker attests in his affidavit that he had known the Applicant's father since 1952, and that they worked together in 1982. Although the affiant claims that the Applicant's father had worked in the United States from 1955 until 2000, he does not explain how he acquired this knowledge and he does not provide additional information to corroborate this claim.

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. In addition, 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) (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).

Here, the affidavits are not sufficiently detailed and they are not supported by other evidence that would lend credibility to the affiants' claims of the father's continuous residence and employment in the United States. As such, the affidavits do not have significant probative value and they do not overcome the lack of primary and secondary evidence. Furthermore, we find that the social security statement the Applicant submitted as evidence of his father's employment in the United States is insufficient to show by a preponderance of evidence that his father satisfied the 10 year physical presence requirement of former section 301(a)(7) of the Act.

III. CONCLUSION

In view of the above, we find that the Applicant has not demonstrated that his U.S. citizen father was physically present in the United States for at least 10 years, five of which were after the father's 14th birthday. Accordingly, the Applicant has not established that he acquired U.S. citizenship at birth through his U.S. citizen father pursuant to 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). The Applicant has not met that burden. Accordingly, we dismiss the appeal.

ORDER: The appeal is dismissed.

Cite as *Matter of M-A-R-O-*, ID# 14680 (AAO Apr. 8, 2016)