

(b)(6)



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

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

MATTER OF J-J-R-A-

DATE: MAR. 30, 2016

APPEAL OF LOS ANGELES, CALIFORNIA 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, Los Angeles, California, Field Office, denied the application. The matter is now before us on appeal. The appeal will be dismissed.

The record reflects that the Applicant was born in Mexico on [REDACTED], to married parents. The Applicant's father was born in the United States on [REDACTED]. The Applicant's mother was a Mexican citizen at the time of the Applicant's birth, but later became a U.S. citizen through naturalization on December 11, 1997. The Applicant was admitted to the United States as a lawful permanent resident on January 3, 1979, based on a Form I-130, Petition for Alien Relative, filed on his behalf by his U.S. citizen father.

On August 11, 2014, the Director denied the Applicant's Form N-600, Application for Certificate of Citizenship, finding 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 appeal¹, the Applicant asserts that the application should be approved as he had provided ample documentary evidence to establish his father's physical presence in the United States for the requisite period of time.

This evidence includes, but is not limited to: birth, marriage, and death certificates; California school records of the Applicant's father; his social security earning statement; and affidavits from the Applicant's mother and brother.

We conduct appellate review on a *de novo* basis. 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).

¹ The Applicant indicates on the Form I-290B, Notice of Appeal or Motion that he is seeking reopening and reconsideration of the Director's adverse decision, but makes it clear in the accompanying brief that he is appealing the Director's decision pursuant to 8 C.F.R. § 103.3.

(b)(6)

Matter of J-J-R-A-

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], to a U.S. citizen father and a foreign national mother. Accordingly, former section 301(a)(7) of the Act controls the Applicant's citizenship claim.²

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:

[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 reflect 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 in [REDACTED], at least 5 of which were after the father's 14th birthday on [REDACTED]

The Applicant asserts that the evidence he submitted is sufficient to demonstrate that his father was physically present in the United States as required by former section 301(a)(7) of the Act. This evidence includes copies of a school record showing that the Applicant's father was enrolled in a school in [REDACTED] California, in 1923, 1924, 1928, 1929, 1930, and 1931. The record indicates that the Applicant's father also enrolled in the school on February 1, 1932, but only attended school until February 14, 1932, when he moved to [REDACTED] Texas. The Applicant contends that the school records account for 9 years before his father turned 14 years of age; however, there is a gap in enrollment between 1924 and 1928 which is not accounted for. Accordingly, the school record the Applicant submitted documents his father's physical presence in the United States for the 6 years he attended the school in California. The school record also demonstrates that the Applicant's father was present in the United States for approximately 7 months after his 14th birthday on [REDACTED], as he was enrolled in and attended school in California until February 14, 1932.

² 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.

(b)(6)

Matter of J-J-R-A-

The Applicant has also submitted a copy of a social security earning statement showing that his father reported annual income of \$743 in 1953, and \$1284 in 1954. However, we find that evidence of this amount of income, without more, is insufficient to support the Applicant's claim that his father was physically present in the United States for the whole 2 years in 1953 and 1954.

The Applicant has also submitted three affidavits to establish his father's physical presence in the United States between 1955 and 1958. Two of the affidavits were executed by the Applicant's mother on January 30, 2014, and September 10, 2014. In the first affidavit, the Applicant's mother states that she married the Applicant's father in 1952, and that the father was living and working in [REDACTED] at that time. She further states that the Applicant's father was present in [REDACTED] in 1955 working in [REDACTED]. The Applicant's mother claims that the Applicant's father was paid in cash and that he would visit her in Mexico every year. The Applicant's mother repeats this statement in her second affidavit, adding that the Applicant's father was also present in the United States after 1955. The Applicant has not submitted evidence to corroborate his mother's statements. 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)). The Applicant's brother, born in [REDACTED] states in his affidavit that he learned from conversations with his father that the father lived and worked on the farms in [REDACTED] Texas, in 1954, 1955, 1956, 1957, and 1958. The affiant states further that his father was paid in cash and that he would come home to Mexico every year for 1 or 2 weeks. Again, these claims are not supported by objective, primary evidence. Moreover, the brother acknowledges that his statements are not based on the firsthand knowledge, but rather on information conveyed to him by his father.

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 or petitioner must demonstrate that primary or secondary evidence does not exist or cannot be obtained. *Id.* Although the Applicant submitted a social security statement to show that his father worked in the United States for some time 1953 and 1954, he has not shown that other documents pertaining to his father's presence in the United States during the relevant time period, such as residence, employment, or tax records, were unavailable or did not exist.

Depending on the specificity, detail, and credibility of an affidavit, letter or statement, U.S. Citizenship and Immigration Services 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).

Matter of J-J-R-A-

These affidavits have been considered in the Applicant's case. However, the affidavits are not sufficiently detailed and they are not supported by other evidence that would lend credibility to the affiants' claims. As such, the affidavits cannot be given significant weight given the lack of primary and secondary evidence. Furthermore, we find that the school record and the social security statement the Applicant submitted as evidence of his father's education and employment in the United States do not establish by a preponderance of evidence that his father has satisfied the 10 year physical presence requirement 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.

Cite as *Matter of J-J-R-A-*, ID# 15824 (AAO Mar. 30, 2016)