(b)(6)

U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF J-A-A-S-

DATE: SEPT. 23, 2016

APPEAL OF CHULA VISTA, 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) 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 5 years occurring after the age of 14) before the individual's birth.

The Field Office Director, Chula Vista,[1] California, denied the application. The Director concluded that the Applicant did not submit sufficient credible evidence to prove that his U.S. citizen father was physically present in the United States during the requisite 10-year period, as required under former section 301(a)(7) of the Act.

The matter is now before us on appeal. In the appeal, the Applicant claims that the Director erred by not taking into account the evidence presented and requiring a standard of proof higher than the preponderance of the evidence standard.

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

I. LAW

The record reflects that the Applicant was born on [redacted] in Mexico to a married U.S. citizen father and a Mexican citizen mother. 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*

[1] The U.S. Citizenship and Immigration Services (USCIS) Field Office in Chula Vista, California, closed in March 2016, and all matters pertaining to that office have transferred to the USCIS Field Office in San Diego, California.

Naturalization Service, 247 F.3d 1026, 1029 n.3 (9th Cir. 2001) (internal quotation marks and citation omitted).

As discussed above, the Applicant was born in 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. PROCEDURAL HISTORY AND EVIDENCE OF RECORD

The Applicant, who is in possession of a border crossing card, and is currently in the United States in non-immigrant status, filed Form N-600, Application for Certificate of Citizenship in March 2015, indicating that he acquired U.S. citizenship at birth from his father pursuant to former section 301(a)(7) of the Act. Evidence submitted in support of the application included copies of the U.S. birth certificate and passport of the Applicant's father, U.S. school documents for the Applicant's father, and evidence related to the Applicant's father's physical presence in the United States, including documents, photographs, and newspaper articles showing that the Applicant's father visited the United States in conjunction with his membership in the and his work in the preparation and organization of the to

In September 2015, the Director issued a request for evidence (RFE) asking the Applicant to provide evidence that his U.S. citizen father was physically present in the United States for 10 years prior to the Applicant's birth.

In response to the RFE, the Applicant submitted copies of U.S. birth certificates of younger siblings of the Applicant's father, and copies of recognition letters and awards that the Applicant's father received, both in the United States and Mexico, showing his service to organizations in the United States.

The Director concluded that the Applicant did not submit sufficient credible evidence to prove that his U.S. citizen father was physically present in the United States for 5 years following his 14th birthday and prior to the birth of the Applicant, as required under former section 301(a)(7) of the Act.

On appeal, the Applicant claims that the Director erred by not taking into account the evidence presented and requiring a standard of proof higher than the preponderance of the evidence standard.

We have reviewed all the evidence in the record of proceeding.

III. ANALYSIS

The Applicant has established that his father is a U.S. citizen as required for acquisition of citizenship at birth under former section 301(a)(7) of the Act by submitting copies of his father's U.S. birth certificate and U.S. passport. The issue presented in this case is whether the Applicant has shown that his U.S. citizen father meets the physical presence requirements of former section 301(a)(7) of the Act, that his father was physically present in the United States for at least 10 years before the Applicant's birth on 5 of which were after the father's 14th birthday on

The evidence in the record establishes that the Applicant's father was physically present in the United States from the time of his birth in until a period of 14 years. However, while the statute at former section 301(a)(7) requires that the U.S. citizen parent be physically present in the United States for a period or periods totaling not less than 10 years, it further requires that at least 5 of those years were after the U.S. citizen parent attained the age of 14 years. Therefore, the remaining issue is whether the Applicant can establish that his father was physically present in the United States for at least 5 years after his father's 14th birthday and prior to his birth.

We find that the evidence presented does not establish it is more likely than not that the Applicant's U.S. citizen father was physically present in the United States for at least 5 years after his 14th birthday on and prior to the birth of the Applicant on

With regard to the physical presence of the Applicant's U.S. citizen father after his 14th birthday in and the birth of the Applicant in the Applicant contends that his father made numerous visits to the United States between and and that the cumulative total of these visits satisfies the requirement that his father was physically present in the United States for 5 years after his father's 14th birthday and prior to the Applicant's birth.

Supporting evidence of the Applicant's father's physical presence in the United States between and includes documents, photographs, and newspaper articles showing that the Applicant's father visited the United States in conjunction with his membership in the and his work in the preparation and organization of the to

In his statement, the Applicant's father claims that he was one of the founders of the of Mexico, in 1947, and visited the United States on numerous occasions in association with his membership in the The Applicant submitted evidence that his father completed a seminar with the in Texas in 1975, and that he attended several meetings related to the club's activities in 1962, 1963, 1965, and 1975. A letter from one of the committees in California indicates that the Applicant's father visited club members almost every year since 1963, and that he would spend time in several counties of the state during each visit.

While the evidence related to the Applicant's father's work with in the United States indicated that his father made numerous visits to the United States between 1947 and the evidence does not show exactly how much time the Applicant's father was physically present in the United States during those visits.

The record also reflects that the Applicant's father was active in organizing a sailing regatta between the United States and Mexico. Evidence includes a letter dated January 18, 2014, from the in California, stating that the Applicant's father was the liaison and contact person for which conducts the annual to yacht race. The letter states that the Applicant's father travels frequently to the United States for the sister city program, the and other civic and charitable activities, and that he came to for each year for the 47 years preceding the date of the letter (1967 to 2014) for activities related to the yacht race. The record also includes a newspaper article, dated 2010, stating that the Applicant's father was the longtime liaison in Mexico, and a copy of the title page for the 1999 listing the Applicant's father as the Mexican coordinator.

The evidence presented related to the Applicant's fathers work with and the sailing regatta also indicates that the Applicant's father made trips to the United States. However, as with the documentation, this evidence does not show the exact dates the Applicant's father was physically present in the United States, in order to undergo a calculation of physical presence during the requisite time frame.

The record indicates that the Applicant's father moved from Mexico, to Mexico, and purchased a bar there in 1953. According to the statement from the Applicant's father, he would travel from Mexico, to California, at least once a week between 1953 and 1976 to purchase supplies for the bar. In addition, he estimates that he traveled to California, about once every 2 weeks. The Applicant claims that even if his father spent only 2 days in the United States during each business trip, the father's physical presence in the United States between 1953 and 1976 would amount to 6 years, 5 months, and 6 days. However, the statement from the Applicant's father is a generalized statement regarding the number of times he went to the United States to purchase supplies, and is not supported by evidence. While the Applicant did provide evidence that his U.S. citizen father frequently visited to the United States on matters related to activities with the and the sailing regatta, he did not submit any evidence, such as receipts for these purchases, to support his father's statement regarding his weekly business trips to the United States. "[G]oing 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 Cal.*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

We have carefully considered the evidence submitted regarding the physical presence of the Applicant's father between the years and and although the evidence indicates that the

Applicant's father traveled to the United States on many occasions, the evidence does not establish that it is more likely than not that the cumulative total of the amount of time that the Applicant's father was physically present in the United States reached 5 years, as required under former section 307(a)(7) of the Act.

IV. CONCLUSION

In view of the above, the Applicant has not demonstrated through a preponderance of the evidence that his father was physically present in the United States for at least 10 years before the Applicant's birth, 5 of which were after the father's 14th birthday on 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.

ORDER: The appeal is dismissed.

Cite as *Matter of J-A-A-S-*, ID# 116059 (AAO Sept. 23, 2016)