U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

Date: MAY 0 8 2014 Office: NEBRASKA SERVICE CENTER FILE:

IN RE:

APPLICATION: Application for Replacement Naturalization/Citizenship Document (Form N-565)

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Application for Replacement Naturalization/Citizenship Document (Form N-565) was denied by the Director of the Nebraska Service Center (the director), and the decision was certified to the Administrative Appeals Office (AAO) for review upon the director's reopening of the matter. The AAO affirmed the director's decision denying the application. The applicant has filed a motion to reopen. The applicant's motion will be granted. The AAO's December 20, 2013, decision will be affirmed and the application will remain denied.

Pertinent Facts and Procedural History

The applicant is a native of Yemen who seeks to change the July 3, 1997, date of birth listed on his certificate of citizenship to February 12, 1990. The director denied the application upon finding that no clerical error was made in preparing the certificate of citizenship, and that the date of birth listed on the certificate conformed to the date of birth previously provided. The director reopened the proceedings for the sole purpose of certifying his decision to the AAO for review.

On certification, the AAO considered, in relevant part, the following evidence submitted by the applicant: a physician's report; a Yemeni birth certificate, recorded on October 22, 2013, listing February 12, 1990, as the applicant's date of birth; DNA evidence; the results of a polygraph examination; and information from the U.S. Department of State (DOS) about the availability of vital statistical documents from Yemen. Ultimately, the AAO found that the submitted evidence did not establish a credible claim to a birth date of February 12, 1990 and affirmed the director's decision to deny the application.

On motion, counsel submits "two birth affidavits . . . describing in detail how the witnesses to the Yemen governmental birth certificate knew about the birth." According to counsel: "For countries that are now creating a Vital Statistics Records . . . the records should be accepted, when documented by DNA . . . and polygraph testing . . . in addition to the required . . . two affidavits of birth."

Applicable Law

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). According to the regulation at 8 C.F.R. § 103.5(a)(2), a motion to reopen must state the new facts to be provided and be supported by documentary evidence. The respondent's motion is accompanied by copies of two legal statements attesting to the applicant's birth on February 12, 1990. The evidencemeets the requirements of a motion to reopen, and will therefore be granted.

As noted in the AAO's December 20, 2013 decision, section 343 of the Act, 8 U.S.C. § 1454, and the corresponding regulations at 8 C.F.R. § 343a, allow for issuance of a replacement certificate if the original document has been lost, mutilated or destroyed. *See* Section 343(a), (c) of the Act; 8 C.F.R. § 343a.1. Section 341 of the Act, 8 U.S.C. §1452, which governs the issuance of certificates of citizenship, does not specifically address the circumstances when a correction of a certificate may be warranted. According to the U.S. Citizenship and Immigration Services (USCIS) Policy Manual at Volume 12, Part K, Chapter 4, an applicant may request a replacement certificate when USCIS

issued a certificate that does not conform to the supportable facts shown on the applicant's Form N-600, or USCIS committed a clerical error in preparing the certificate.

Analysis

In support of his motion, the applicant submits two "legal statements" issued in January 2014 by the Republic of Yemen, Ministry of Justice, General Notarization Department, based upon testimony given by and respectively. and had previously written a joint "legal statement" in 2013 that the AAO discussed in its prior decision, finding that the joint statement had little evidentiary weight because the individuals did not explain how they had direct personal knowledge of the applicant's birth and its circumstances.

Depending on the specificity, detail, and credibility of a letter or statement, USCIS may give the document more or less persuasive weight in a proceeding. 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) (citing cases). The Board also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." 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).

The two 2014 legal statements submitted on motion are identical, and in them and each attest to being the applicant's parents' neighbor and having personal knowledge of the applicant's birth as well as the birth of the applicant's siblings because " and 's parents] attended [the applicant and his siblings'] birth." According to the statements, and each attested "that [the applicant's parents'] *sons* were born," and "the *sons* and their birth dates are . . . ." (Emphasis added). The statements list the names and alleged dates of birth for the applicant and his two siblings. However, the applicant's parents did not have three sons; they had two sons and one daughter. Thus, the reference to "sons" in the legal statements is erroneous and indicates no direct and personal knowledge of the birth details of the applicant and his siblings, and also calls into question whether and were neighbors of the applicant's parents as claimed. Accordingly, the AAO finds that the two legal statements fail to provide a credible factual foundation for the applicant's date of birth being February 12, 1990.

On motion, counsel states that because Yemen is "now creating a Vital Statistics Records," USCIS should accept the applicant's new birth certificate, listing his date of birth as February 12, 1990, because it is accompanied by DNA, polygraph testing and the two legal statements. In its prior decision, the AAO addressed the deficiencies of the DNA and polygraph evidence in establishing a date of birth for the applicant, and herein discussed the insufficiency of the legal statements. While information from the Department of State (DOS) discussed in the AAO's prior decision provides that "Yemen does not yet have an established system of recording vital statistics," such information does mean that Yemen is "now creating a Vital Statistics Records." According to the DOS

information, court judgments are usually obtained as evidence of birth.[1] The legal statements in the record from and are declarations prepared by the Ministry of Justice, General Notarization Department, and are not court judgments.

In its prior decision, the AAO's discussed counsel and the applicant's failure to provide any reasonable explanation for why the applicant and his father failed to report the applicant's birth as February 12, 1990 on numerous petitions and applications submitted to USCIS and the legacy Immigration and Naturalization Service throughout the years, and neither party has elected to provide an explanation on motion. Contrary to counsel's assertion on motion that Yemen is only now creating vital statistics records, the record contains the applicant's birth certificate from the Republic of Yemen, Ministry of Interior, Civil Status of Civil Registration Administration. This birth certificate, which was submitted in conjunction with the Petition for Alien Relative (Form I-130) that the applicant's father filed on the applicant's behalf, indicates that the applicant's "7/3/1997 (Seventh March, One Thousand Nine Hundred, ninty [sic] seven" date of birth was recorded "in the Births' Register No: 2 under entry No: 36 on 7-3-98 in the Civil Registration Department, Dhala district, Lahj Governorate." The Republic of Yemen also issued a passport to the applicant on July 22, 2006 with a "1997-07-03" date of birth. Neither counsel nor the applicant has clarified why neither this birth certificate nor the applicant's passport shows a February 12, 1990 date of birth, as they were issued by governmental authorities in Yemen and used to obtain U.S. immigration benefits. Nor has counsel or the applicant submitted any statements from Yemeni authorities recognizing that these two documents are fraudulent or contain incorrect information. 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 must establish, by a preponderance of the evidence, that his correct date of birth is February 12, 1990. The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). In evaluating the evidence, *Matter of E-M-* also stated that "[t]ruth is to be determined not by the quantity of evidence alone but by its quality." *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, USCIS must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if USCIS has some doubt as to the truth, if the applicant submits relevant, probative, and credible evidence that leads the agency to believe that the claim is "probably true" or "more likely than not," the applicant has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (defining "more likely than not" as a greater than 50 percent probability of something occurring). If USCIS can articulate a material doubt that leads it to believe that the claim is probably

[1] This information may be accessed at http://travel.state.gov/visa/fees/fees_3272.html by selecting Yemen as the country.

not true, then USCIS may deny the application. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

Here, the applicant has not submitted relevant, probative and credible evidence that he was born on February 12, 1990. The applicant has also not explained why his father stated on his Form N-400 that he had twin sons, if the applicant and his brother really have two different dates of birth.[2] In addition, the two legal statements submitted on motion have no probative value in that they refer to the applicant's parents' three sons when the parents have two sons and one daughter.

When viewed in its totality the evidence of record does not establish that a change in the applicant's date of birth on his certificate of citizenship from July 3, 1997 to February 12, 1990 is warranted. However, while the applicant may not be issued a new certificate with a February 12, 1990 date of birth, USCIS did make a clerical error in the preparation of the applicant's certificate of citizenship in that the date of birth should be have been listed as March 7, 1997, not July 3, 1997.[3]

Conclusion

It is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Although the applicant may not be issued a new certificate, listing a February 12, 1990 date of birth, he is entitled to a new certificate, listing March 7, 1997 as his date of birth.

ORDER: The motion is granted. The AAO's December 20, 2013 decision dismissing the appeal is affirmed to the extent that a change in the applicant's date of birth to February 12, 1990 is not warranted. However, the applicant is entitled to a new certificate, listing March 7, 1997 as his date of birth.

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[2] The applicant's alleged twin is now claiming to have been born on January 3, 1991.

[3] As discussed earlier in this decision, the record contains a birth certificate for the applicant, indicating that his "7/3/1997 (Seventh March, One Thousand Nine Hundred, ninty [sic] seven" date of birth was registered on March 7, 1998 with Yemeni authorities. Thus, a clerical error was made in the preparation of the certificate; although, we note that several petitions and applications submitted to the legacy Immigration and Naturalization Services (INS) and USCIS have listed the applicant's date of birth alternately as "7/3/1997" or "3/7/1997" and his immigrant visa contains a July 3, 1997 date of birth. We note further that neither counsel nor the applicant raised this error on appeal or motion.