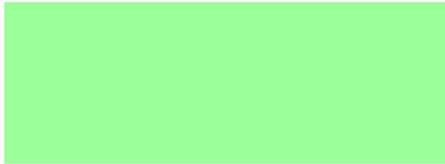


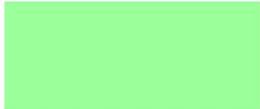


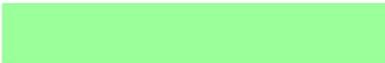
U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **MAY 08 2014** Office: NEBRASKA SERVICE CENTER

FILE: 

IN RE: 

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

ON BEHALF OF APPLICANT:

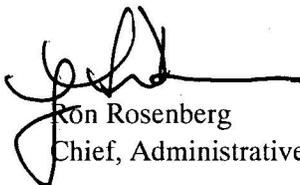


INSTRUCTIONS:

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 came before the Administrative Appeals Office (AAO) on appeal. The AAO summarily dismissed the appeal but reopened the matter on its own motion to consider the evidence of record. Upon review, the AAO dismissed the appeal. 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 appeal will remain dismissed.

Pertinent Facts and Procedural History

The applicant is a native of Yemen who seeks to change the May 2, 2001, date of birth listed on her certificate of citizenship to July 3, 1997.

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.

On appeal, the AAO considered, in relevant part, the following evidence submitted by the applicant: a physician's report; a Yemeni birth certificate, recorded on October 21, 2013, listing May 2, 2001 as the applicant's date of birth; a "Legal Statement" attesting to the applicant's May 2, 2001 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 May 2, 2001 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 May 2, 2001. The evidence meets 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

The date of birth indicated on the applicant's certificate of citizenship, May 2, 2001, conforms to the information provided by the applicant in her Form N-600 and in her immigration file, including: the Petition for Alien Relative (Form I-130) filed by her father on her behalf; her Yemeni passport issued in July 2006; and a birth certificate submitted with her Form N-600, which reflects a May 2, 2001 date of birth for the applicant and provides that the applicant's birth data was recorded with the Civil Registration Department in Yemen on July 24, 2005. The May 2, 2001, date is also listed as the applicant's date of birth on her father's naturalization application, filed in 2004.

In support of this 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 [REDACTED] and [REDACTED] respectively. [REDACTED] and [REDACTED] 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 [REDACTED] and [REDACTED] 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 "[REDACTED] and [REDACTED]'s parents] attended [the applicant and her siblings'] birth." According to the statements, [REDACTED] and [REDACTED] 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 her two siblings. However, the applicant's parents did not have three sons; they had two sons and one daughter, who is the applicant. 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 her siblings, and also calls into question whether [REDACTED] and [REDACTED] 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 July 3, 1997, particularly in light of the other evidence of record containing the May 2, 2001 date of birth.

On motion, counsel states that because Yemen is "now creating a Vital Statistics Records," USCIS should accept the applicant's new birth certificate, listing her date of birth as July 3, 1997, 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 [REDACTED] and [REDACTED] 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 her father reported the applicant's birth as May 2, 2001 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 May 2, 2001 birth was recorded "in the Register of birth No: 4 under Entry No: [REDACTED] the Civil Personal Status department . . . District: Al-Dhala, Governate Al-Dhala." The Republic of Yemen also issued a passport to the applicant on July 16, 2006 with the May 2, 2001 date of birth. Neither counsel nor the applicant has clarified why neither this birth certificate nor the applicant's passport shows July 3, 1997 as the 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 her correct date of birth is July 3, 1997. 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

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

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 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 she was born on July 3, 1997. If the applicant's May 2, 2001 date of birth is incorrect, she must provide testimonial or documentary evidence to explain why her date of birth was originally registered in 1998 as May 2, 2001, and her father indicated May 2, 2001 as the applicant's date of birth on the Form I-130 submitted on the applicant's behalf and on his own Application for Naturalization (Form N-400) in 2004. 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, who is the applicant.

When viewed in its totality the evidence of record does not establish that the date of birth on the applicant's certificate of citizenship is erroneous such that issuance of a replacement certificate would be warranted. USCIS issued a certificate to the applicant that conformed to the supportable facts shown on the applicant's Form N-600 and in her administrative immigration record, and the applicant has not demonstrated that USCIS committed a clerical error in preparing the certificate.

Conclusion

It is the applicant's burden to establish eligibility for the immigration benefit sought, and here the applicant has not met that burden. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The motion is granted. The AAO's December 20, 2013 decision is affirmed.
The appeal remains dismissed.