



1 ineligible for derivative citizenship because he was over the age of  
2 majority when his mother naturalized. See 8 U.S.C. § 1432(a) (West  
3 1994), *repealed by* Child Citizenship Act of 2000, § 103, Pub. L. No.  
4 106-395, 114 Stat. 1631.<sup>1</sup> Absent such derivative citizenship,  
5 Petitioner is subject to the removal order issued against him in 2000.

6 To resolve Petitioner's status, the Court held evidentiary  
7 hearings on August 25, 2009 and June 16, 2010. (Dkt. 25, 41). On  
8 September 8, 2010, the Court issued its Findings of Fact and  
9 Conclusions of Law, holding that Petitioner was not a U.S. citizen  
10 because he failed to prove by a preponderance of the evidence that he  
11 was born in 1977. See Demirchyan v. Gonzales, No. CV 08-3452 SVW  
12 (MANx), 2010 WL 3521784 (C.D. Cal. Sept. 8, 2010). In so concluding,  
13 the Court principally relied on two documents indicating that  
14 Petitioner was born in 1976: (1) his Registration for Classification as  
15 Refugee; and (2) a copy of Petitioner's birth certificate issued in  
16 July 1988, which he submitted to the United States embassy in Moscow to  
17 emigrate to this country ("1988 Birth Certificate"). Id. at \*13.

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19 <sup>1</sup>At the relevant time period, the operative statute provided:  
20 A child born outside of the United States of alien parents, or  
21 of an alien parent and a citizen parent who has subsequently  
22 lost citizenship of the United States, becomes a citizen of the  
23 United States upon fulfillment of the following conditions:  
24 . . .  
25 (3) The naturalization of the parent having legal custody of the  
26 child when there has been a legal separation of the parents . .  
27 . ; and if  
28 (4) **Such naturalization takes place while such child is under  
the age of eighteen years;** and  
(5) Such child is residing in the United States pursuant to a  
lawful admission for permanent residence at the time of the  
naturalization of . . . the parent naturalized under clause (2)  
or (3) of this subsection, or thereafter begins to reside  
permanently in the United States while under the age of eighteen  
years.

8 U.S.C. § 1432(a) (West 1994) (emphasis added).

1           Conversely, the Court rejected other items of evidence that  
2 purported to show that Petitioner was born in 1977. Most notably, the  
3 Court rejected a copy of another birth certificate issued by Armenia in  
4 2000 ("2000 Birth Certificate") on the ground that it was inadmissible  
5 hearsay, since it failed to satisfy the public records exception. Id.  
6 at \*18. Additionally, the Court rejected as incredible the testimony  
7 of (1) Petitioner's mother, who averred that the 1988 Birth Certificate  
8 was inaccurate; and (2) Petitioner's brother, who suggested that the  
9 1988 Birth Certificate was the product of a clerical error. Id. at  
10 \*15. In short, the Court concluded that Petitioner was not a U.S.  
11 citizen pursuant to 8 U.S.C. § 1432(a), and returned the matter to the  
12 Ninth Circuit for further proceedings. Id. at \*18-19.

13           Upon return to the Ninth Circuit, Petitioner filed a motion to  
14 supplement the record with "new" evidence. Fed. R. App. P. 10(e)(2).  
15 Instead of granting the motion, the Ninth Circuit concluded that "there  
16 continues to be an unresolved 'genuine issue of material fact about the  
17 petitioner's nationality.'" (Dkt. 61). Accordingly, the panel  
18 returned the case to this Court "in order to permit the parties to move  
19 . . . for admission of documents not previously presented there, and to  
20 permit the district court to reconsider its findings of fact and  
21 conclusions of law in light of any such evidence it deems admissible."  
22 (Id.).

23           On July 19, 2011, pursuant to the Ninth Circuit's order,  
24 Petitioner lodged with this Court twelve "new" Exhibits A through L.  
25 (Dkt. 65). The most prominent of these documents appears to be a copy  
26 of Petitioner's birth certificate issued by Armenia in 1997, which  
27 indicates a birthdate of July 27, 1977 ("1997 Birth Certificate").  
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1 (Dkt. 65, Ex. A). The remaining eleven exhibits also show a birth year  
2 of 1977, including copies of two U.S. passports issued to Petitioner  
3 (Exs. B, C); a copy of an Armenian passport (Ex. D); a copy of Form I-  
4 90 application to replace Permanent Resident Card filled out by  
5 Petitioner in December 2001 (Ex. E); various pages from the Immigration  
6 and Naturalization Service ("INS") database (Exs. F-K); and a copy of  
7 an Application for Certificate of Citizenship submitted by Petitioner  
8 in October 2000 (Ex. L).

9 On July 25, 2011, the Court explained that it read the Ninth  
10 Circuit's transfer order to mean that the Court must "determine whether  
11 the new documents attached on Appeal are admissible and then make  
12 changes to its findings, if necessary." (Dkt. 68). To this end, the  
13 Court ordered the Petitioner "to file a memorandum with attached  
14 declarations that allow the Court to determine whether the documents  
15 are admissible," and "if [they] are found admissible, why they should  
16 change the Court's earlier findings." (Id.). Petitioner complied  
17 (Dkt. 69), and Respondent filed a response (Dkt. 71).

18 On October 24, 2012, the Court conducted further evidentiary  
19 hearing to elicit testimony from witnesses who could speak to these  
20 "new" exhibits, in particular the purported 1997 Birth Certificate.  
21 (Dkt. 79, 82). The Court heard testimony from (1) Petitioner Arutyun  
22 Demirchyan; (2) Petitioner's mother, Susanna Demirchyan; (3) Asatur  
23 Guyumjyan; and (4) Zara Hovanisyan. (Dkt. 86).<sup>2</sup>

24 Having reviewed the parties' briefing, documentary evidence, and  
25 live testimony with respect to these "new" exhibits, and taking into  
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27 <sup>2</sup> The Court will detail below the testimony of these persons as  
28 necessary in the course of its findings of fact.

1 account the Court's previous findings and conclusions, the Court now  
2 re-examines the merits of Petitioner's claim.

3 **II. FINDINGS OF FACT**

4 The Court set forth several findings of fact in its previous Order  
5 dated September 10, 2008, which need not be repeated here. Demirchyan,  
6 2010 WL 3521784 at \*13-18. Since then, the Court has received  
7 Petitioner's submission of twelve "new" exhibits as well as affidavits  
8 and oral testimony from witnesses in support of these documents. The  
9 sole inquiry is whether such evidence leads the Court to alter its  
10 original findings. Having reviewed these evidentiary submissions and  
11 related pleadings, the Court makes the following additional factual  
12 findings.

13 **A. 1997 Birth Certificate (Exhibit A)**

14 Petitioner has submitted a copy of a birth certificate that, based  
15 on the English translation, appears to have been issued by Armenia on  
16 April 29, 1997, and which states that Petitioner was born on July 27,  
17 1977. (Dkt. 65, Ex. A).

18 Before it can discern the evidentiary value of the 1997 Birth  
19 Certificate, the Court must determine if it is admissible. "Hearsay  
20 and authentication are separate and independent requirements for  
21 evidentiary admissibility." Demirchyan, 2010 WL 3521784, at \*3. The  
22 Court addresses the document's authenticity first.

23 **1. Authentication**

24 A document may be authenticated by virtue of its own contents,  
25 Fed. R. Evid. 902, or on the basis of extrinsic evidence "sufficient to  
26 support a finding that the matter in question is what its proponent  
27 claims." Fed. R. Evid. 901(a).



1 apostille may be used in place of the final certification demanded  
2 under Rule 44(a)(2)(A)(ii). See United States v. Nunez-Beltran, No.  
3 10cr522 JM(CAB), 2010 WL 2985490, at \*4 (S.D. Cal. July 26, 2010).

4 None of the foregoing conditions are met here. Petitioner has  
5 submitted an unofficial photocopy of the 1997 Birth Certificate. (Dkt.  
6 65, Ex. A). Though the English translation is notarized, it is unclear  
7 what the notary is attesting to. In any event, the 1997 Birth  
8 Certificate is not accompanied by any "final certification of  
9 genuineness" or model apostille under the Hague Convention indicating  
10 that the notary was authorized to attest to the document's  
11 authenticity. Fed. R. Civ. P. 44(a)(2)(A)(ii). Moreover, for reasons  
12 explained further below, the Court does not find that good cause exists  
13 to relax the certification requirement. Fed. R. Civ. P. 44(a)(2)(C).  
14 Therefore, the document's authenticity is not self-evident.

15 **b. Extrinsic Evidence**

16 Even where self-authentication is unavailable, however, a document  
17 may still be authenticated through extrinsic evidence "sufficient to  
18 support a finding that the item is what the proponent claims it is."  
19 Fed. R. Evid. 901(a); see Vatyan v. Mukasey, 508 F.3d 1179, 1183-84  
20 (9th Cir. 2007). For example, in Vatyan, the Court held that the  
21 immigration judge erred in refusing to consider the petitioner's own  
22 testimony that his Armenian documents bore certain indicia of  
23 authenticity. Id. at 1184-85. However, just because a judge *may*  
24 consider such testimony "does not mean that the [judge] *must* accept the  
25 documents into evidence or deem their contents to be true." Id. That  
26 decision ultimately will depend on the strength of the evidentiary  
27 showing of authenticity.

1 **i. Petitioner's Allegations**

2 The Court begins with the alleged provenance of the 1997 Birth  
3 Certificate. To support the authenticity of the 1997 Birth  
4 Certificate, Petitioner relies on the written and oral testimony of  
5 (1) himself; (2) his mother, Susanna Demirchyan; (3) his former  
6 neighbor in Armenia, Asatur Guyumjyan; and (4) his girlfriend's mother,  
7 Zara Hovanisyan. Their collective testimony is summarized below.

8 In or about 1992, Petitioner's mother, Susanna Demirchyan  
9 ("Susanna") sent a power of attorney to her former neighbor in Armenia,  
10 Lusine Jambaryan, to obtain a "corrected" birth certificate for  
11 Petitioner from Armenian authorities. (Dkt. 69, Ex. B ("Susanna Aff.")  
12 ¶ 19). This attempt failed because Jambaryan committed suicide. (Id.  
13 ¶ 20). In or about 1996, Susanna asked and authorized another former  
14 neighbor in Armenia, Asatur Guyumjyan ("Guyumjyan"), to obtain a birth  
15 certificate for Petitioner. (Id. ¶ 20). Susanna avers that "in 1997  
16 Asatur arranged for someone to bring the corrected birth certificate to  
17 me." (Id.).

18 According to Guyumjyan's affidavit, he personally went to the City  
19 Hall in Yerevan, Armenia, to fill out the request for a birth  
20 certificate. (Dkt. 69, Ex. M ("Guyumjyan Aff.") ¶ 8). Approximately  
21 two weeks later, Guyumjyan returned to City Hall to retrieve the  
22 certificate. (Id. ¶ 10). Guyumjyan states in his affidavit that  
23 "[s]oon after receiving the birth certificate, [he] found out about a  
24 person who was travelling from Armenia to the United States . . . met  
25 this person at the airport and gave them [Petitioner's] certified birth  
26 certificate for delivery in the United States." (Id. ¶ 11).

27 In the fall of 1997, Susanna claims that she and Petitioner  
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1 visited the INS office in Los Angeles to present a copy of the 1997  
2 Birth Certificate. (Susanna Aff. ¶ 21). She avers that upon their  
3 arrival, an INS agent instructed them to mail the original, along with  
4 a translation, to the INS. (Id. ¶ 21). Susanna states in her  
5 affidavit that she complied. (Id. ¶ 22). According to her, the next  
6 time she saw the 1997 Birth Certificate was at Petitioner's removal  
7 proceedings in 2000, when the INS attorney handed the certificate to  
8 the immigration judge. In Susanna's words, the birth certificate "was  
9 not in the best of shape" at the time, and "the immigration judge  
10 commented that it was 'well worn.'" (Id. ¶ 25). The immigration judge  
11 asked Susanna to have the original 1997 Birth Certificate authenticated  
12 in Armenia. (Id.). Thus, in November 2000, Susanna returned to  
13 Yerevan to authenticate the 1997 Birth Certificate. Instead of  
14 authenticating it, however, the Armenian official kept the 1997  
15 document and issued a new birth certificate dated 2000, which also  
16 reflected a birthdate of July 27, 1977. (Id. ¶ 25).

17       Petitioner also relies on the affidavit of Zara Hovanisyan to  
18 corroborate the authenticity of the 1997 Birth Certificate. According  
19 to Petitioner, Hovanisyan has "extensive knowledge about Armenian  
20 Archives and the official practices of the Archives." (Dkt. 69 at 11).  
21 In her affidavit, Hovanisyan avers that she "clearly recognize[s]" the  
22 1997 Birth Certificate as "consistent with one issued by the Armenian  
23 government." (Dkt. 69, Ex. N ("Hovanisyan Aff.") ¶ 5). In particular,  
24 she attests that the shape of the seal is "exactly the type" used by  
25 the Armenian government and located in the place where an archivist  
26 would put the seal. (Id.). She further testifies that the symbols,  
27 language, and layout of the document are "exactly those used by the  
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1 Armenian government on birth certificates." (Id.). Accordingly, she  
2 concludes that the 1997 Birth Certificate "is a valid document done  
3 according to law." (Id.).

4 **ii. Analysis**

5 Although courts must consider extrinsic evidence relating to the  
6 authenticity of a proffered document, this "does not mean that the  
7 [Court] *must* accept the document[] into evidence or deem [its] contents  
8 to be true." Vatyan, 508 F.3d at 1185. Courts "retain broad  
9 discretion to accept a document as authentic or not based on the  
10 particular factual showing presented." Id. In this case, although the  
11 Court must consider the foregoing testimony "as evidence that is  
12 relevant to the issue of the [certificate's] authenticity," the Court  
13 "can assess the credibility of that testimony and determine whether the  
14 balance of the evidence is sufficiently compelling to satisfy him that  
15 the documents are what [its proponent] claims them to be." Id.<sup>4</sup> For  
16 the reasons below, the Court concludes that the balance of evidence  
17 presented by Petitioner is insufficient to persuade the Court that the  
18 1997 Birth Certificate is genuine.

19 As a preliminary observation, the basic premise that Susanna  
20 entrusted a tourist from Armenia to deliver her son's birth certificate  
21 to the United States, when she could have used a mail delivery service,  
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23 <sup>4</sup> In Vatyan, the Ninth Circuit elaborated that a court "need not  
24 accept all documents as authentic nor credit documentary submissions  
25 without careful scrutiny so long as the rejection is premised on more  
26 than a guess or surmise." Id. at 1185 n.4 (internal quotation marks  
27 omitted). Moreover, even if a court "concludes that the petitioner  
28 has presented sufficient prima facie evidence of a document's  
authenticity to admit it into evidence, the [court] as the trier of  
fact retains discretion to weigh the evidence's credibility and  
probative force." Id. (internal citation and quotation marks  
omitted).

1 strikes the Court as fanciful. Even forgetting this facial  
2 peculiarity, however, the Court cannot accept the alleged provenance of  
3 the 1997 Birth Certificate because it is marred, from start to finish,  
4 by material gaps and troubling inconsistencies in the record.

5 **(a) Who Obtained the Certificate**

6 First, Guyumjyan testified that he obtained the 1997 Birth  
7 Certificate from the city hall in Yerevan, Armenia in 1997. However,  
8 during Petitioner's deposition in May 2009, which was admitted into  
9 evidence in the prior evidentiary hearing, Petitioner affirmatively  
10 stated that it was his cousin, Hovhannes Kachanyan ("Hovhannes"), who  
11 obtained the 1997 Birth Certificate from Armenian government.<sup>5</sup> (Tr. II  
12 at 8-10). Petitioner never mentioned Guyumjyan's role until the  
13 instant proceeding.

14 Guyumjyan testified that the copy of the 1997 Birth Certificate  
15 entered into evidence is the "exact certificate" which he received from  
16 the Armenian archives. (Dkt. 86 ("Tr. II") at 93:9-25). He has,  
17 however, failed to supply any evidence that would tend to corroborate  
18 that he obtained the certificate, such as a copy of the alleged power  
19 of attorney provided to him, copies of paperwork filled out at the  
20 Armenian City Hall, or receipts of payment for the birth certificate.  
21 The absence of such documentary proof, along with the circumstantial  
22 evidence discussed below, militates against the trustworthiness of  
23 Guyumjyan's account.

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25 <sup>5</sup> This is corroborated by Susanna's 2009 deposition testimony, in  
26 which she likewise testified that her relative, not the neighbor,  
27 obtained the 1997 Birth Certificate. (Tr. II at 46:10-14). However,  
28 because her deposition has not been admitted into evidence, and  
because Susanna did not confirm in court that she made this  
statement, the Court refrains from relying on her inconsistent  
deposition testimony.

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**(b) Who Found the Tourist**

The witnesses have also made contradictory statements about how Guyumjyan located the mystery tourist. Although the witnesses stated during the last evidentiary hearing that Guyumjyan identified and contacted the tourist through Hovhannes, who knew the tourist was coming to the United States, nowhere in the witnesses' previously filed affidavits do they even mention Hovhannes's key role. (Compare Tr. II at 101:5-14 with Guyumjyan Aff. ¶ 12); (Compare Susanna Aff. ¶ 20 with Tr. II at 59:25-62:16); (Compare Tr. II at 39:5-7 with Dkt. 69-1 ("Pet. Aff.") ¶ 16). Additionally, although Guyumjyan stated in his declaration that he delivered the certificate to the tourist at the airport, Guyumjyan averred in court that he and Hovhannes delivered the 1997 Birth Certificate to the tourist at his or her home. (Compare Tr. II at 102-103, 112 with Guyumjyan Aff. ¶ 12). The Court finds it highly suspect not only that these witnesses have equivocated on the most basic facts of this story, but that their memories have changed in lockstep. This sort of parallel evolution in testimony is not a sign of reliability, but of orchestration.

**(c) Who Was the Tourist**

The most troubling aspect of the proffered account is the shroud of mystery that surrounds the purported tourist. It is incredible that neither Guyumjyan nor Susanna remember the name or any traits of the tourist, whom they both met in person. Such ignorance is especially difficult to comprehend given the gravity of the courier's task. (Tr. II at 62-63, 102-103). This glaring void in Guyumjyan's memory is all the more incredible when contrasted against his vivid memory that when he allegedly retrieved the 1997 Birth Certificate, he asked the

1 Armenian official why the stamp was incomplete, and the official  
2 responded that they did not have ink. (Tr. II at 94:15-18). It is  
3 likewise hard to accept that Susanna could not recall the circumstances  
4 of receiving the birth certificate from the tourist, such as whether  
5 they met at home or in public. (Tr. II at 62-63). Perhaps most  
6 implausible, though, is Susanna's in-court assertion that she was *not*  
7 *told* the name of the tourist. (Tr. II at 62:22-23). It defies common  
8 sense to believe that a person awaiting an important document to be  
9 delivered overseas by a stranger would not have been told, at a  
10 minimum, the name of the courier.

11 **(d) What Happened to the 1997 Birth**  
12 **Certificate**

13 There is also inconsistent testimony regarding the events that  
14 followed the alleged delivery of the 1997 Birth Certificate to Susanna  
15 in the United States. Although Susanna stated in the 2009 evidentiary  
16 hearing that after receiving the 1997 Birth Certificate, she gave it to  
17 her son and did nothing more with it, she contradicted herself in the  
18 recent hearing by testifying that she accompanied her son to the INS  
19 office to try to update his records with the 1997 Birth Certificate.  
20 (Compare Dkt. 26 ("Tr. I") at 24:1-13, Tr. II at 52:2-5 with Tr. II at  
21 64:18; Susanna Aff. ¶ 21).<sup>6</sup> Tellingly, the 1997 Birth Certificate was  
22 not at issue at the time of the 2009 hearing, which focused on the  
23 authenticity of the 2000 Birth Certificate. Thus, it was only when the  
24 1997 Birth Certificate became the crux of Petitioner's case that

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25 <sup>6</sup> The Court notes that the foregoing documents are not being relied  
26 upon for the truth of their contents but rather were introduced as  
27 impeachment evidence. Accordingly, the hearsay rules do not apply to  
28 these documents. See Fed. R. Evid. 801(c) ("Hearsay" is a statement  
. . . offered in evidence to prove the truth of the matter  
asserted.").

1 Susanna suddenly remembered additional details to flesh out the chain  
2 of events concerning the 1997 Birth Certificate. Here again, Susanna's  
3 conveniently timed flip-flop substantially weakens the reliability of  
4 her account.

5 Susanna has also given contradictory versions of the chain of  
6 custody of the 1997 Birth Certificate after her visit to the INS. In  
7 her affidavit, Susanna stated that after visiting the INS, she and  
8 Petitioner mailed the original birth certificate along with its English  
9 translation to the INS, and that she did not get the original back  
10 until the 2000 removal proceedings. (Susanna Aff. ¶ 22). In court,  
11 however, Susanna and Petitioner testified that they only mailed the  
12 translation to the INS, and that they kept the original in a box in her  
13 home. (Tr. II at 34-35, 69-70). Yet the immigration judge in 2000  
14 observed that the 1997 Birth Certificate was "well worn." (Susanna  
15 Aff. ¶ 24); (Dkt. 69, Ex. O at 363). The Court cannot fathom how a  
16 birth certificate obtained in 1997 and kept in a box would become "well  
17 worn" in three years. Susanna's apparent inability to set forth  
18 consistently these fundamental facts, combined with the general  
19 implausibility of her current story, seriously undermines the Court's  
20 confidence in the veracity of this account.

21 **(e) Hovanisyan**

22 Finally, although Zara Hovanisyan attested in her affidavit that  
23 the 1997 Birth Certificate is authentic, even if she was found  
24 truthful, there are gaps in the foundation for her testimony. Even  
25 though Hovanisyan worked in the Armenian Archives between 1978 and  
26 1983, her job as an "archival fund preserver" simply entailed recording  
27 documents before transferring them to the archives. (Tr. II at 127).  
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1 She admitted in court that birth certificates were dealt with in a  
2 different division than hers, that her job description never included  
3 authenticating birth certificates, and that she never received training  
4 in that respect. (Tr. II at 123:9-17). As such, her experience with  
5 birth certificates is premised solely on the vague proposition that she  
6 has "had contact" with these documents. (Tr. II at 123:11-12, 137:4-  
7 7). Even crediting that statement, the Court has found no basis to  
8 infer that the birth certificates Hovanisyan encountered in 1983,  
9 including their stamps and symbols, even remotely resembled the birth  
10 certificates being issued fourteen years later in 1997. In other  
11 words, there is a lack of foundation to believe that Hovanisyan  
12 acquired the knowledge needed to recognize the style and symbols on the  
13 1997 Birth Certificate to be genuine. In view of this threadbare  
14 foundation, the Court accords Hovanisyan's opinion minimal weight.<sup>7</sup>

15 **(f) Potential Biases**

16 In viewing the pervasive inconsistencies and gaps in the alleged  
17 provenance of the 1997 Birth Certificate, the Court's skepticism is  
18 only heightened by these key witnesses' obvious motivation to protect  
19 Petitioner. As already noted, Hovanisyan has known Petitioner for two  
20 years and her daughter currently is dating Petitioner. Guyumjyan and  
21 Petitioner grew up together, as their families were next door neighbors  
22 in Armenia for twelve years. (Guyumjyan Aff. ¶¶ 2-3). Susanna has a  
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24 <sup>7</sup> Hovanisyan's testimony is unreliable for the additional reason that  
25 her daughter, Angie Markosian, is currently dating Petitioner. (Tr.  
26 at 124-25). Hovanisyan further admitted on re-direct that Petitioner  
27 is her former son-in-law's friend, and that she has known Petitioner  
28 for close to two years. (Tr. at 125). Hovanisyan's lack of  
experience with authenticating birth certificates, coupled with her  
obvious motivation to protect her daughter's friend, renders her  
testimony incredible.

1 natural incentive to protect her child. See Cuellar v. Joyce, 596 F.3d  
2 505, 511 (9th Cir. 2010) (probative value of sister's report was  
3 "limited given the sister's likely bias," along with other factors).  
4 Even absent these potential biases, however, the Court would still  
5 reject the proffered explanation of the 1997 Birth Certificate's  
6 origin, for the reasons already discussed.

7 **(g) General Observations**

8 Two additional observations cause the Court to look askance at the  
9 foregoing testimony. First, the form of Guyumjyan and Susanna's  
10 affidavits is nearly as troubling as their content. Preliminarily,  
11 neither Guyumjyan nor Susanna's signed affidavits bear any date of  
12 execution. Moreover, because Guyumjyan has trouble reading English,  
13 (Tr. II at 88:11-12), he signed his affidavit (written in English) only  
14 after reviewing it with a translator, who explained its contents to him  
15 in Armenian. (Tr. II at 89:11-14, 97:16-23, 105:11-15). Meanwhile,  
16 Susanna's original, signed affidavit was typed in Armenian, and  
17 subsequently translated into English by the same person who translated  
18 for Guyumjyan. (Dkt. 69-2 at 6). Disturbingly, this translator was  
19 Angie Markosyan, who is not only the daughter of another witness, Zara  
20 Hovanisyan, but who is currently in a dating relationship with  
21 Petitioner. (Tr. II at 97, 105-106, 124-25).<sup>8</sup> The fact of Markosyan's  
22 involvement alone casts an even darker shadow over the alleged

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24 <sup>8</sup> The Court observed that Guyumjyan was evasive when questioned about  
25 the translator on cross-examination. When Respondent asked him who  
26 translated his affidavit to him, Guyumjyan did not provide a name,  
27 but only stated, "Not a relative." (Tr. II at 97:23). This response  
28 is puzzling since Respondent never suggested that it was a relative.  
Rather, it appears to be a transparent attempt to deflect attention  
from the fact that the translator was Petitioner's girlfriend. The  
Court finds that Guyumjyan's defensive demeanor bolsters the  
conclusion that his testimony is unreliable.



1 provenance of the 1997 Birth Certificate.

2       Second, viewing the record generally, the fact that the 1997 Birth  
3 Certificate was formally brought to this Court's attention for the  
4 first time in the instant proceeding is itself cause to view the  
5 document's authenticity with suspicion. Petitioner contends that his  
6 former counsel, James Rosenberg, was ineffective in failing to present  
7 the 1997 Birth Certificate during the first iteration before this  
8 Court. For his part, Attorney Rosenberg has submitted an affidavit  
9 stating that he did not offer the 1997 Birth Certificate because he did  
10 not have an original version, and because he believed it was more  
11 appropriate to submit the 2000 Birth Certificate, which bears a model  
12 apostille. (Dkt. 69, Ex. F ("Rosenberg Aff.") ¶ 4).

13       The Court finds this explanation unsatisfactory. By the close of  
14 the August 25, 2009 evidentiary hearing, it was already clear that the  
15 2000 Birth Certificate's authenticity would be contested by Respondent.  
16 Specifically, during that hearing, Respondent sought to introduce  
17 testimony from the consular official in Yerevan, Armenia, stating that  
18 the 2000 Birth Certificate was fraudulent. (Tr. I. at 63-66).  
19 Moreover, the Court continued the evidentiary hearing until June 15,  
20 2010, and invited the parties to file supplemental briefs concerning  
21 the consular official's diplomatic note concerning the authenticity of  
22 the 2000 Birth Certificate. (Dkt. 30, 34). In view of foregoing, it  
23 strains credulity to claim that Attorney Rosenberg continued to  
24 withhold the 1997 Birth Certificate because he believed the 2000 Birth  
25 Certificate was stronger evidence. Rather, common sense dictates that  
26 introducing the 1997 Birth Certificate during this intervening period  
27 could have, at a minimum, helped to corroborate the origin of the 2000  
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1 Birth Certificate.

2 Nor can Petitioner hide behind the alleged ineptitude of Attorney  
3 Rosenberg, since Rosenberg was replaced by Attorney Platt on January  
4 26, 2010, more than *five months before* the Court's second evidentiary  
5 hearing on June 16, 2010. (Dkt. 33, 41). Petitioner posits that  
6 Attorney Platt also misunderstood the importance of the 1997 Birth  
7 Certificate, but this is naked speculation.<sup>9</sup> (Dkt. 69 at 6). Given  
8 that the 2000 Birth Certificate's authenticity was drawn into doubt as  
9 early as August 2009, the logical response was to submit the 1997 Birth  
10 Certificate as supportive evidence. Yet both Petitioner's attorneys  
11 declined to do so. It is plausible to infer that neither attorney had  
12 faith in the 1997 Birth Certificate's admissibility.

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14 In sum, the Court concludes that Petitioner has failed to produce  
15 credible extrinsic evidence "sufficient to support a finding that the  
16 item is what the proponent claims it is." Fed. R. Evid. 901(a). The  
17 witnesses' collective account is fraught with gaps, inconsistencies,  
18 and biases, and the testimony of Hovanisyan is simply not probative.  
19 Taken together, this evidence is insufficiently compelling to persuade  
20 the Court that the 1997 Birth Certificate is what Petitioner claims.  
21 Vatyan, 508 F.3d at 1185. Moreover, the 1997 Birth Certificate lacks  
22 the qualities to meet the criteria for self-authentication. For all  
23 the foregoing reasons, the Court concludes that the 1997 Birth  
24 Certificate is inadmissible and shall be excluded from evidence.<sup>10</sup>

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25  
26 <sup>9</sup> Attorney Platt did not submit an affidavit, much less state what  
Petitioner claims.

27  
28 <sup>10</sup> Furthermore, even if the 1997 Birth Certificate were admissible,  
the Court would refrain from crediting the facts stated in the

1           **B.    Passports (Exhibits B, C, D)**

2           Upon transfer from the Ninth Circuit, Petitioner also submitted  
3 for the Court's consideration copies of: (1) a United States passport  
4 issued in 2002; (2) a United States passport issued in 2009; and (3) an  
5 Armenian passport issued in 2007, all indicating Petitioner's birth  
6 year as 1977. (Dkt. 65, Exs. B, C, D).

7           Even assuming these passports are admissible, they carry minimal  
8 weight. The contents of these passports reflect the birth date  
9 reported by Petitioner in his applications. However, the Court notes  
10 that the United States initiated removal proceedings against Petitioner  
11 in August 2000. Demirchyan, 2010 WL 3521784, at \*13. Therefore, these  
12 passports are inherently unreliable because they were applied for after  
13 Petitioner had a motive to prove that his birth year was 1977. As  
14 such, they are insufficient to overcome the substantial contrary  
15 evidence, highlighted in the Court's previous order, indicating that  
16 Petitioner's birth year is in fact 1976.<sup>11</sup>

17  
18 \_\_\_\_\_  
19 document. Not only is the alleged provenance of the document  
20 implausible on its face, it is founded upon the inconsistent and  
21 biased testimony of Petitioner's mother, childhood friend, and  
22 girlfriend's mother. The fact that the 1997 Birth Certificate was  
23 first introduced to this Court at this late stage adds yet another  
24 layer of suspicion. This weak evidentiary basis, mired in doubt, is  
25 insufficient to overcome the evidence from the Court's previous  
26 findings, which firmly showed that Petitioner was born in 1976.  
27 Accordingly, even if it were admissible, the 1997 Birth Certificate  
28 would not alter the Court's prior order.

24       <sup>11</sup> Petitioner contends that his post-removal self-reporting of the 1977  
25 birth date reflected his effort to "correct the record." (Dkt. 69 at  
26 19). This assertion begs the question of Petitioner's true  
27 birthdate. For the same reasons discussed in its previous order, the  
28 Court finds Petitioner's naked assertion to be both incredible (due  
to Petitioner's clear bias and to his former perjury convictions,  
Fed. R. Evid. 609(a)(2)) and lacking in personal knowledge, see Fed.  
R. Evid. 602.

1           **C.    Form I-90 & Form N-600 Applications (Exhibits E, L)**

2           Petitioner also attached (1) Exhibit E, a Form I-90 application to  
3 replace a permanent resident card; and (2) Exhibit L, a Form N-600  
4 application for certificate of citizenship, both of which indicate a  
5 birthdate of July 27, 1977. (Dkt. 65, Exs. E, L). However, these  
6 forms were filled out by Petitioner after the United States commenced  
7 removal proceedings against him. As such, Petitioner's self-reported  
8 birthdate is unreliable because he had an incentive to represent that  
9 his birth year was 1977. Accordingly, even assuming these exhibits are  
10 admissible, the Courts finds that they are eclipsed by the  
11 uncontroverted evidence arising prior to the removal proceedings  
12 indicating a 1976 birth year.

13           **D.    INS Database Documents (Exhibits F-J)**

14           Exhibits F through J purport to be documents from INS records  
15 reflecting Petitioner's birth year as 1977. Petitioner claims he  
16 received these documents from the United states in response to a FOIA  
17 request. (Dkt. 69 at 18). Similar to the passports, however, the  
18 birth dates in these exhibits are based on Petitioner's self-reporting,  
19 and these database documents were generated after the government  
20 initiated removal proceedings against Petitioner. Therefore, these  
21 records are insufficient to controvert the evidence of Petitioner's  
22 1976 birth year.<sup>12</sup>

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25           <sup>12</sup> Alternatively, these exhibits are inadmissible because Petitioner  
26 has failed to establish their authenticity. The documents are not  
27 self-authenticating, as they do not bear any official seals of the  
28 INS or official therein. Fed. R. Evid. 902. Nor did Petitioner  
proffer extrinsic evidence of their authenticity in his pleadings or  
at the hearing.

1           **E. Record of Deportable/Inadmissible Alien (Exhibit K)**

2           Exhibit K provides Form I-213, prepared in conjunction with  
3           Petitioner's criminal conviction, by the Department of Justice in 1998.  
4           (Dkt. 65, Ex. K). The typewritten portion of the form indicates  
5           Petitioner's birthdate as "7/27/76;" however, "7/27/77 (?)" is hand  
6           written in the space adjacent. (Id.).

7           Even if the Form I-213 were admissible, the Court is not persuaded  
8           that the handwritten notation, "7/27/77 (?)" implies that Petitioner  
9           was born in 1977. Petitioner has provided no evidence indicating who  
10          made the notation, or the circumstances under which it was made.  
11          Rather, the handwritten notation suggests only what the Court already  
12          knows, namely that there exists arguably conflicting evidence regarding  
13          Petitioner's birthdate. Merely pointing to this conflict, however,  
14          does not aid the Court in resolving it. Therefore, this evidence is  
15          unhelpful and does not alter the Court's previous decision.

16           **F. Affidavits of Family and Friends**

17          In its July 25, 2011 order, the Court invited Petitioner to submit  
18          "a memorandum with attached declarations that allow the Court to  
19          determine whether the [exhibits A through L] are admissible," and "if  
20          [they] are found admissible, why they should change the Court's earlier  
21          findings." (Dkt. 68).

22          In response, Petitioner filed fifteen (15) affidavits from  
23          himself, family, and friends. (Dkt. 69, Ex. A-0). Certain of these  
24          affidavits complied with the Court's order by attempting to lay  
25          foundations with respect to Exhibits A through L, and these are  
26          incorporated in the Court's foregoing discussion. (Dkt. 69, Ex. A, B,  
27  
28

1 F, M, N).<sup>13</sup>

2       However, the remaining affidavits comprise the testimony of  
3 Petitioner's relatives and friends attempting to show that Petitioner  
4 was born in 1977. (Dkt. 69, Ex. C, D, E, G, H, I, J, K, L). These  
5 affidavits are beyond the scope of this Court's limited remand because  
6 they do not shed any light on the admissibility or weight to be  
7 accorded to the "new" exhibits submitted by Petitioner. Nonetheless,  
8 in reviewing the affidavits, the Court concludes that even if they were  
9 considered, the affidavits have little persuasive value as they are  
10 biased and, at any rate, do not controvert the substantial documentary  
11 evidence pointing to Petitioner's 1976 birthdate. As such, they do not  
12 shift the preponderance of the evidence in Petitioner's favor.

13 **III. CONCLUSIONS OF LAW**

14       "Evidence of foreign birth . . . gives rise to a rebuttable  
15 presumption of alienage, and the burden then shifts to the petitioner  
16 to prove citizenship." Martinez-Madera v. Holder, 559 F.3d 937, 940  
17 (9th Cir. 2009) (quoting Scales v. I.N.S., 232 F.3d 1159, 1163 (9th  
18 Cir. 2000)). It is undisputed that Petitioner was born in Armenia.  
19 Petitioner therefore bears the burden of proving that he is an American  
20 citizen. Lim v. Mitchell, 431 F.2d 197, 199 (9th Cir. 1970); see also  
21 Carrillo-Lozano v. Holder, No. CV-09-1948-PHX-NVW, 2010 WL 2292981, at  
22 \*1 (D. Ariz. June 8, 2010) (same); Anderson v. Holder, No. CIV. 2:09-  
23 2519 WBS JFM, 2010 WL 1734979, at \*3 (E.D. Cal. Apr. 27, 2010) (same).

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24  
25 <sup>13</sup> The Court recognizes that in determining Petitioner's true birth  
26 date, the Court could rely solely on the testimony of Susanna if it  
27 found her to be credible. However, in view of the Court's findings  
28 regarding the contrived origin of the 1997 Birth Certificate, these  
observations only serve to reinforce the Court's conclusion in its  
previous order that the mother's testimony is unreliable.

1 The parties, in their initial Joint Statement re: New Case Status  
2 Conference, agreed that Petitioner bears the burden of proving his  
3 citizenship. (Dkt. 8 at 2-3 ("The parties agree that Demirchyan must  
4 prove four essential facts in order to be eligible for derivative  
5 citizenship. . . . To date, the administrative and judicial proceedings  
6 have focused on the . . . requirement [that his mother was naturalized  
7 before he turned eighteen]."))).

8 Based on the Court's findings of fact, the Court concludes as a  
9 matter of law that Petitioner has failed to meet his burden of proving  
10 by a preponderance of evidence that he is a United States citizen.  
11 Petitioner has failed to prove that he was born in 1977, and therefore  
12 that he was under the age of 18 at the time that his mother was  
13 naturalized in December 1994. The Court has concluded that the  
14 entirety of the admissible and credible evidence supports a finding  
15 that Petitioner was born in 1976. The only evidence to the contrary  
16 was either inadmissible as a matter of law or unreliable.

17 Accordingly, Petitioner is not entitled to citizenship under 8  
18 U.S.C. § 1432(a) (West 1994).

#### 19 **IV. CONCLUSION**

20 For the foregoing reasons, the Court refrains from modifying its  
21 original conclusion: the Petition is DENIED. While the Court  
22 recognizes the severity of this result, Petitioner has failed to carry  
23 his burden to prove by a preponderance of the evidence that he was in  
24 fact born in 1977. There were simply too many questions and doubts  
25 surrounding the proffered exhibits for such evidence to outweigh the  
26 contrary evidence of a 1976 birth year. The Government shall file a  
27 proposed final judgment within five days, at which time the parties  
28

1 shall have fourteen days to notify the Ninth Circuit per its Order  
2 dated June 14, 2011.

3  
4 IT IS SO ORDERED.

5  
6 DATED: March 28, 2013



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7 STEPHEN V. WILSON  
8 UNITED STATES DISTRICT JUDGE  
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