U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19067886

Date: JAN. 28, 2022

Appeal of Denver Field Office Decision

Form N-600, Application for a Certificate of Citizenship

The Applicant, who was born abroad in 1976 to unmarried parents, seeks a Certificate of Citizenship to reflect that he acquired U.S. citizenship at birth from his mother under section 309(c) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1409(c).

The Director of the Denver Field Office in Centennial, Colorado denied the Form N-600, concluding that the Applicant did not establish that his mother was a U.S. citizen at the time of his birth, a threshold requirement for acquisition of citizenship under section 309(c) of the Act.

On appeal, the Applicant submits an updated statement from his mother and asserts that the evidence he previously provided is sufficient to show that his maternal grandfather was a U.S. citizen who met the relevant conditions to transmit U.S. citizenship to his mother, who then conveyed her U.S. citizenship to him at birth

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

I. LAW

The Applicant claims that he acquired U.S. citizenship at birth from his mother who, according to the Applicant, acquired U.S. citizenship at birth from her own father (his maternal grandfather). To evaluate this claim, we must first ascertain which laws apply to acquisition of citizenship by the Applicant and his mother. 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. *Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1029 n.3 (9th Cir. 2001) (internal quotation marks and citation omitted).

A. Law in Effect at the Time of the Applicant's Birth

The Applicant was born in Mexico to unmarried parents in [redacted] 1976. The Applicant's birth certificate reflects that his mother was a Mexican national; however, the Applicant claims that his mother acquired U.S. citizenship at birth from her father who was a U.S.-born citizen. If the Applicant can establish that his mother was a U.S. citizen when he was born, his citizenship claim will fall within

the provisions of section 309(c) of the Act, which provides in relevant part that that a child born abroad "out of wedlock shall be held to have acquired at birth the nationality status of his mother, if the mother had the nationality of the United States at the time of such person's birth, and if the mother had previously been physically present in the United States or one of its outlying possessions for a continuous period of one year."

B. Law in Effect at the Time the Applicant's Mother Was Born

The Applicant's mother was born in Mexico in [redacted] 1948 to married parents. The Applicant claims that his maternal grandfather was born in Texas in March 1914, and his maternal grandmother was a Mexican national who became a U.S. citizen through naturalization in 1999.[1] The applicable citizenship statute in effect when the Applicant's mother was born was section 201(g) of the Nationality Act of 1940 (the 1940 Act), 8 U.S.C. § 601(g), which was in effect from January 13, 1941, until December 24, 1952.[2] Under that section, an individual who was born abroad to married parents one of whom was a U.S. citizen, would acquire U.S. citizenship at birth if the U.S. citizen parent resided in the United States for 10 years (5 of which were after the age of 16) before the individual's birth.

For the purposes of section 201 of the 1940 Act, "the place of general abode shall be deemed the place of residence." Section 104 of the 1940 Act. "The place of general abode" means an individual's "principal dwelling place," without regard to intent. *Matter of B-*, 4 I&N Dec. 424, 432 (BIA 1951).

Lastly, an individual who acquired U.S. citizenship at birth under section 201(g) of the 1940 Act had to comply with certain physical presence requirements in order to retain it. Section 201(h) of the 1940 Act.

C. Burden and Standard of Proof

Because both the Applicant and his mother were born abroad, they are presumed to be noncitizens and the Applicant bears the burden of establishing by a preponderance of credible evidence that they are U.S. citizens. *Matter of Baires-Larios*, 24 I&N Dec. 467, 468 (BIA 2008). Under the preponderance of the evidence standard, the Applicant must demonstrate that the claims of his mother's and his own U.S. citizenship are "probably true," or "more likely than not." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

II. ANALYSIS

The primary issue before us is whether the Applicant has established that his mother was a U.S. citizen at the time he was born in 1976. If this is shown, we must then determine whether the Applicant's mother met the U.S. physical presence requirement to retain and then transmit her citizenship to the Applicant under section 309(c) of the Act.

[1] The Applicant's mother was 51 years old at the time, and the Applicant does not claim that his mother was eligible to derive citizenship after birth, which requires an individual born abroad to satisfy certain statutory conditions, including a parent's naturalization before turning 18 years of age.

[2] Section 201(g) of the 1940 Act was repealed on that date by the Immigration and Nationality Act.

We have reviewed the entire record, as supplemented on appeal and for the reasons explained below conclude that the evidence is insufficient to show that the Applicant was born to a U.S. citizen mother. Because the Applicant is ineligible for a Certificate of Citizenship on that basis alone, we need not address at this time whether his mother met the relevant citizenship retention conditions under section 201(g) of the 1940 Act and whether she satisfied the physical presence requirement under section 309(c) of the Act for transmission of citizenship.

To establish that his mother acquired U.S. citizenship at the time of her birth in Mexico in [redacted] 1948, the Applicant must show that his maternal grandfather was a U.S. citizen who resided in the United States for at least 10 years prior to [redacted] 1948, and that five of those years were after the grandfather's 16th birthday in March 1930.

The previously provided supporting evidence consists of the grandfather's Texas birth certificate registered in 1956, his baptismal certificate, evidence of his 1950 U.S. entry, his 1950 U.S. medical certificate, and an affidavit from the Applicant's maternal grandmother. In addition, the Applicant now submits an affidavit from his mother concerning the grandfather's birth in Texas.

A. Grandfather's Citizenship

The Director determined that the grandfather's birth certificate, registered 42 years after his birth, was insufficient to establish that he was in fact born in El Paso, Texas. Specifically, the Director noted that the grandfather's birth was registered based solely on two affidavits and did not include information about the specific location in El Paso, Texas where he was born. The Director further found that the information in the grandfather's birth certificate was not consistent with his Mexican 1947 marriage certificate where he was identified as a Mexican national born in "Esmelda, Nuevo Mexico," as well as the 1948 birth record of the Applicant's mother where the grandfather was similarly listed as a national of Mexico. Lastly, the Director concluded that the evidence indicating that the grandfather voted in the 1946 general election in Mexico further pointed to his Mexican, rather than U.S. nationality.

We agree that a delayed birth certificate does not have the same weight as a contemporaneous birth record, even when unrebutted by contrary evidence, due to the potential for fraud. *Matter of Bueno-Almonte*, 21 I&N Dec. 1029, 1032-33 (BIA 1997). Such birth certificate therefore must be evaluated in light of the other evidence of record and the circumstances of the case. *Id.*

Here, the preponderance of the evidence and the specific circumstances of this case support the Applicant's claim that his maternal grandfather was a U.S.-born citizen. Although the grandfather's birth in Texas was not registered until 1956, he previously claimed to be a U.S. citizen when he traveled to the United States from Mexico in 1950 and was admitted to the United States as such. Furthermore, the grandfather's birth certificate reflects that in registering his birth Texas state authorities relied, in part on the affidavit of the Applicant's great-grandmother who attested that she gave birth to his grandfather in Texas in March 1914. The record also contains the grandfather's baptismal certificate, which lists his place of birth as El Paso, Texas, and shows that he was baptized at a church there in May 1914. In addition, the grandfather's 1950 medical certificate includes a note that the grandfather presented his baptismal certificate issued by the same church in El Paso, Texas, to the examiner and stated that he had it with him when he previously traveled to the United States in

June 1949. Moreover, the Applicant explains that "Nuevo Mexico" listed on the grandfather's marriage certificate as his place of birth was likely a reference to a Mexican-American community at the Texas and New Mexico border to which his grandfather may have had a connection at the time. The Applicant's mother states in her affidavit that her own mother (the Applicant's maternal grandmother) mentioned that the grandfather worked in New Mexico at a factory called "La Esmelda," which was about five minutes away from the border crossing in El Paso. The Applicant further states that the fact his grandfather may have voted in the 1946 Mexican general election does not disprove his U.S. citizenship, and we agree. Specifically, the record shows that the Applicant's grandfather was admitted to the United States as a U.S. citizen in 1950, and that he was subsequently recognized as such by U.S. state and federal authorities.[3]

Furthermore, while the grandfather's birth was registered late, other documentary evidence which includes the grandfather's baptismal certificate, as well as his testimony reflected in his travel and medical records dated before the formal registration of his birth in Texas point to his U.S. citizenship. Lastly, as the grandfather's U.S. citizenship was recognized years before the Applicant filed his Form N-600, the potential for fraud concerning the grandfather's citizenship does not appear significant.

Based on the above, we conclude that the Applicant has met his burden of proof to establish that his maternal grandfather "more likely than not" was a U.S.-born citizen and we withdraw the Director's determination to the contrary.

B. Grandfather's Physical Presence in the United States

Nevertheless, we agree with the Director's determination that the Applicant did not establish that his grandfather resided in the United States for five years after he had turned 16 years old, as required under section 201(g) of the 1940 Act to transmit his citizenship to the Applicant's mother.

The Director concluded that although the evidence considered in the aggregate was adequate to show that the Applicant's grandfather likely resided in the United States for 10 years before the birth of the Applicant's mother in 1948, it was not sufficient to establish that at least five of those years occurred after the grandfather's birthday in March 1930. Specifically, the Director determined that the grandfather's statements at the time of his 1950 entry, which indicated that he was in the United States from birth until sometime in 1925, that he worked in Maryland and Kansas in as a contract laborer for an unspecified period in 1945, and that he worked in Idaho in 1947 were not sufficient to establish that he resided in the United States for at least five years within the relevant 1930-1948 timeframe. The Director acknowledged the 2015 affidavit from the Applicant's maternal grandmother, in which she claimed that the grandfather worked in the United States for "10 months to a year" each year from August 1942 until 1957, but determined that her statements could not be given significant weight as they were neither detailed nor consistent with the grandfather's own testimony indicating that he was not in the United States during the 20-year period from 1925 to 1945. The Director further noted that other evidence also did not support the grandmother's claims of the grandfather's residence in the United States within the claimed 1942-1957 period, as the grandfather's marriage certificate reflected that he was in Mexico in June 1947, his medical certificate indicated that he was in Mexico for the

[3] We note that in 1978 the Applicant's mother was admitted to the United States as a lawful permanent resident daughter of a U.S. citizen (P-11), and the grandfather's birthplace is listed as "El Paso" on his 1991 Texas death certificate.

July 1946 general election, and the mother's birth certificate showed that the grandfather registered her birth in Mexico in August 1948.

The Applicant states that the Director misinterpreted the information in the grandfather's 1950 entry record, which he claims was not intended to be a complete list of all the time his grandfather spent in the United States, but only a record of some of the trips he made to the United States before 1950. He asserts that the information in the medical certificate supports this conclusion, as it indicates that the grandfather reported two more trips to the United States in 1949 which were not included on his 1950 entry document issued just two days before. The Applicant further states that the Director did not give proper weight to his grandmother's affidavit which he claims is sufficient to show that his grandfather "spent a total of 5 years working in the US between at least 1942 and May of 1948," and asserts that his grandfather's presence in Mexico in 1946 and 1947 may have coincided with his brief annual family visits there that lasted no more than "a couple of months." Lastly, the Applicant avers that the fact the grandfather's employer, a Texas company, was listed on his 1950 entry record indicates that the grandfather resided there before 1950.

We acknowledge the Applicant's statements, but find them insufficient to overcome the evidentiary deficiencies identified by the Director. While the grandfather's entry document may not have included all periods of his employment and presence in the United States, it is nevertheless a record of the grandfather's contemporaneous testimony about the time he spent in the United States prior to 1950. This testimony does not indicate (contrary to the grandmother's later claims) that the grandfather was consistently employed in the United States since 1942; rather it points to his temporary or seasonal work in the country as a contract laborer for unspecified periods in 1945 and 1947. Moreover, the grandfather's statement that he worked in three different states in those years indicates that he did not have a fixed "principal dwelling place" in the United States at the time. Furthermore, the inclusion of the grandfather's Texas employer on the 1950 entry document does not prove that he was likely employed there on a regular basis prior to 1950, as the Applicant suggests. Although the note on the entry document indicates that the grandfather's "[l]ast permanent residence" in the United States was in Edinburgh, Texas, it does not specify when and how long he resided there. Furthermore, while the grandfather identified Kansas, Maryland, and Idaho as locations where he worked as a contract laborer, he did not mention that he was employed in Texas at any time prior to 1950; rather, the note on his entry document indicates that he was coming to the United States in 1950 "to reside permanently" and to work for a particular employer in Texas. While the same Texas employer is listed on the grandfather's social security card, the card is not dated and therefore insufficient to determine if the grandfather was employed and resided in Texas at any time prior to the birth of the Applicant's mother in 1948. Moreover, according to the grandfather's social security earnings statement, the grandfather began reporting his income in the United States in 1955, which further indicates that he was not regularly employed in the United States before then. Thus, while we recognize that the grandfather's testimony at the time of his 1950 entry may have been incomplete, or that not all of his testimony was included on the entry document, this is insufficient to establish that the grandfather was in fact residing in the United States for any length of time outside the 1914-1925, 1945, and 1947 years specifically listed therein. The Applicant did not provide any other documents, such as the grandfather's work contracts and paystubs, as well as residential, social security, or census records to support his claim that his grandfather consistently worked and resided in the United States for most of the 1942-1948 period.

The information in the grandmother's affidavit is not sufficient to overcome the lack of such primary evidence. When affidavits are submitted to prove the merits of a citizenship claim, we determine their evidentiary weight based on the extent of the affiants' personal knowledge of the events they attest to, and the plausibility, credibility, and consistency of their statements with evidence in the record. *Matter of E-M-*, 20 I&N Dec. 77 (Comm'r 1989). We cannot give the grandmother's affidavit significant weight in establishing the grandfather's residence in the United States during the relevant 1942-1948 period indicated, as the affidavit lacks sufficient detail and corroborating evidence to support her claims.

As an initial matter, there is no indication that the Applicant's grandmother had personal knowledge of where the grandfather worked and lived when he was not in Mexico, which diminishes the probative value of her testimony. The grandmother indicated generally that the grandfather went to work in the United States in August 1942 when the Bracero Program[4] started and his employment continued through 1957. She stated that the grandfather would stay in the United States for 10 months to a year at a time and that this cycle continued through 1957. She stated that she remembered that he first worked in "San Luis where they would grow lettuce," and that "on one occasion he sent about $30.00." The grandmother did not explain, however, the basis for her knowledge about the grandfather's employment in "San Luis,"[5] nor did she provide any information about where else he worked over the years, what specific jobs he performed, and where he stayed in the United States during the claimed 15-year of his employment period from 1942 until 1957. As stated, the Applicant did not provide primary documents to support the grandmother's claims of his grandfather's employment in the United States, nor did he submit any other affidavits from individuals who may have had personal knowledge of his residence and employment in the United States from 1942 through at least 1948. Thus, while we do not dispute that it is possible the grandfather may have worked in the United States within this timeframe, the evidence is insufficient to determine the specific periods of his employment. More importantly, given that the grandfather was identified as a "contract laborer" on his 1950 entry document, his immediate family resided in Mexico at the time, and the Applicant did not explain where specifically his grandfather worked and lived in the United States prior to 1948, we cannot conclude that the grandfather's "place of general abode" within the relevant 1930-1948 period was likely in the United States, and not in Mexico where his family lived.

Based on the above, we conclude that the Applicant has not demonstrated that his grandfather resided in the United States for at least 5 years after he turned 16 years of age in March 1930, and before the Applicant's mother was born in Mexico in [redacted] 1948. The Applicant therefore has not established that his grandfather satisfied the specific residence requirements in section 201(g) of the 1940 Act to transmit his citizenship to the Applicant's mother. Consequently, he has not shown that his mother acquired U.S. citizenship at birth from his grandfather and thus, that she was a U.S. citizen at the time of his birth in 1976.

Because this determination is dispositive of the Applicant's appeal, we decline to reach and hereby reserve the issues concerning his mother's physical presence in the United States during the periods

[4] This program, which started in August 1942 permitted millions of Mexican nationals to work legally in the United States to ease labor shortages. *See* i.e., Library of Congress, A Latinx Resource Guide: Civil Rights Cases and Events in the United States *1942: Bracero Program*, https://guides.loc.gov/latinx-civil-rights/bracero-program#:~:text=An%20executive%20order%20called%20the,on%20short%2Dterm%20labor%20contracts.

[5] The grandmother did not identify the state where the grandfather worked.

required for retention of U.S. citizenship acquired under section 201(g) of the 1940 Act, and for transmission of citizenship under section 309(c) of the Act. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

Lastly, we acknowledge the Applicant's assertion that although the Immigration Judge who terminated his removal proceedings did not have authority to declare him a U.S. citizen, the Director nevertheless should have afforded more weight to the Immigration Judge's finding that he acquired U.S. citizenship at birth. The Immigration Judge's finding, however, reflects only that the Department of Homeland Security did not meet its burden of proof in removal proceedings to establish the Applicant's alienage and removability by clear and convincing evidence. *See* 8 C.F.R. § 1240.8(a). As stated, the burden of proof in these proceedings is on the Applicant to establish that he is a U.S. citizen, which requires him to demonstrate, in part that his maternal grandfather "more likely than not" resided in the United States for at least 5 years after he had turned 16 years of age in 1930 and before the Applicant's mother was born in Mexico in 1948. Section 341(a) of the Act, 8 U.S.C. § 1452(a); 8 C.F.R. § 342(c). As discussed, the Applicant has not met that burden.

III. CONCLUSION

The Applicant has demonstrated that his maternal grandfather was a U.S.-born citizen. Nevertheless, he has not met his burden of proof to establish that his grandfather satisfied the U.S. residence requirement under section 201(g) of the 1940 Act to transmit his U.S. citizenship to the Applicant's mother. As such, the Applicant has not shown that he was born to a U.S. citizen mother, a threshold requirement for acquisition of U.S. citizenship under section 309(c) of the Act. He is therefore ineligible for a Certificate of Citizenship and his application remains denied.

ORDER: The appeal is dismissed.