U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 18930395

Date: JAN. 28, 2022

Appeal of Harlingen, Texas Field Office Decision

Form N-600, Application for a Certificate of Citizenship

The Applicant seeks a Certificate of Citizenship to reflect that he acquired U.S. citizenship at birth from his father pursuant to former section 301(g) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(g).

The Director of the Harlingen, Texas Field Office denied the Form N-600 concluding that the Applicant did not establish that his father had the requisite prior physical presence in the United States to transmit his U.S. citizenship to the Applicant at birth.

On appeal, the Applicant submits an affidavit from his father along with the previously provided documentary evidence.

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

I. LAW

The Applicant was born in [redacted] 1981 in Mexico to unmarried parents. The Applicant's father is a U.S. citizen, and his mother is a citizen of Mexico.

The applicable law for transmitting citizenship to a child born abroad when one parent is a U.S. citizen is the statute that was in effect at the time of the child's birth. *See Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1029 n.3 (9th Cir. 2001) (internal quotation marks and citation omitted).

The statute in effect at the time of the Applicant's birth was former section 301(g) of the Act, which provided in pertinent part that a child born abroad to one U.S. citizen and one noncitizen parent would acquire U.S. citizenship if the child's U.S. citizen parent "prior to the birth of such [child], was physically present in the United States or its outlying possessions for a period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years."

A child, who like the Applicant was born out of wedlock to a U.S. citizen father, may acquire citizenship only if certain paternity and legitimation requirements set forth in section 309(a) of the

Act, 8 U.S.C. § 1409(a) are also met. Prior to November 14, 1986, section 309(a) of the Act required paternity of a child to be established by legitimation while the child was under the age of 21 years. The Act of November 14, 1986, amended the "old" section 309(a), applying the changed provisions to individuals who were not yet 18 years of age on November 14, 1986, unless their paternity was established by legitimation before that date.

Because the Applicant was born abroad, he is presumed to be a noncitizen and bears the burden of establishing his claim to U.S. citizenship by a preponderance of credible evidence. *Matter of Baires-Larios*, 24 I&N Dec. 467, 468 (BIA 2008). Under the preponderance of the evidence standard, the Applicant must demonstrate that his claim is "probably true," or "more likely than not." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010)(citing *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989)).

II. ANALYSIS

There is no dispute that the Applicant's father is a U.S. citizen, as the record contains a copy of his timely-registered birth certificate which shows that he was born in Texas in 1958. The evidence is also sufficient to show that the Applicant's paternity was established by legitimation prior to November 14, 1986, as required under the "old" section 309(a) of the Act, as the Applicant submitted a copy of his parents' marriage certificate to show that they were married in Texas in [redacted] 1985, when he was four years old.[1] The only issue on appeal is whether the Applicant has demonstrated that his father was physically present in the United States for no less than 10 years prior to the Applicant's birth in Mexico in [redacted] 1981, and that at least 5 of those years were after the father's 14th birthday in [redacted] 1972.

In support of his Form N-600 and in response to the Director's subsequent request for evidence the Applicant submitted his father's birth and baptismal certificates; the father's social security earnings statement and his 1977 federal income tax return; and affidavits. The Applicant's father also provided a sworn statement about his physical presence in the United States during an interview with a U.S. Citizenship and Immigration Services (USCIS) officer concerning the Applicant's citizenship claim.

The Director found the above evidence insufficient to establish that the Applicant's father satisfied the overall physical presence requirement under former section 301(g) of the Act. Specifically, the Director concluded that because the father's social security earnings statement listed varying yearly income prior to 1981, it was not clear how much time the father actually spent working in the United States during the relevant period. The Director also noted that the father's own testimony indicated that he returned to Mexico when he was four or five years old, and that he did not begin living the United States permanently until approximately 1984, three years after the Applicant was born. Lastly, the Director determined that the affidavits the Applicant submitted could not be given significant probative weight in establishing his father's physical presence in the United States, as they were neither sufficiently detailed nor supported by other evidence.

[1] Under Texas law in effect at the time, marriage of the parents served to legitimate an out-of-wedlock child. *See* Tex. Family Code Ann. § 12.02 (West 1987).

To overcome the evidentiary deficiencies identified by the Director, the Applicant now submits an affidavit from his father, along with his father's previously submitted birth record, baptismal certificate, and earnings statement.

We have reviewed the record of proceedings as supplemented on appeal, and for the reasons explained below conclude that the evidence is still insufficient to show that the Applicant's father satisfied the 10-year physical presence requirement under former section 301(g) of the Act.

A. Evidence of the Father's Physical Presence in the United States from 1958 to 1972

The preponderance of the evidence is sufficient to show only that the Applicant's father spent a little over one year in the United States prior to his 14th birthday in 1972. Specifically, the father's birth certificate shows that he was born on [redacted] 1958, on a Texas ranch where his own father (the Applicant's paternal grandfather) worked as a farm laborer at the time. The record also contains the father's certificate of baptism at a church in Texas a year later, on [redacted] 1959. These two documents indicate that the Applicant's father likely resided with his parents and was physically present in Texas for over a year as a child. The Applicant's father testified that he continued to live in the United States until he was "four or five" years old, but he did not specify when and under what circumstances he returned to Mexico, or on what basis he estimated how long he resided in the United States after birth. Absent this information the father's unsupported testimony is not sufficient to establish that he "more likely than not" was physically present in the United States for four or five years when he was a child.

We acknowledge the father's statement in the affidavit submitted on appeal that he started coming to the United States to work when he turned 11 years old; however, we similarly cannot give this testimony significant weight as it lacks details and corroboration. For example, the father states that when he was 11 years old he "would travel to Washington D.C. to work . . . cutting and picking cauliflower and asparagus," but he does not explain how often, with whom, and by what means he traveled to work in that particular area and how long he remained in the United States during those trips. The father further states that he also traveled to Dallas, Houston, Ohio, Michigan, Louisiana, and Mississippi to work, and that he was paid cash because he was underage. Again, this statement does not include any information about the manner, frequency, and duration of those trips. The Applicant submits no other evidence, such as residential or tax records, or affidavits from the individuals who had personal knowledge of the father's work in the United States when he was a child and who could attest to how long he was in the United States during the periods of his employment at an early age. For these reasons, the father's supplemental testimony is insufficient to determine how much time he actually spent in the United States after he started working in various areas of the country at the age of 11 years.

Given the lack of specificity and corroboration of the father's testimony concerning his presence in the United States as a child, we cannot determine when and how long the Applicant's father was in the United States before he turned 14 years old. As the only other evidence of the father's presence in the United States during this period are his birth in baptismal certificates, we conclude that the Applicant has demonstrated only that his father was likely physically present in the United States for approximately one year and two weeks prior to his 14th birthday.

B. Evidence of the Father's Physical Presence in the United States from 1972 to 1981

The Applicant's father indicated in his sworn statement and affidavit that he worked in the United States as a teenager, and the evidence supports his testimony. Nevertheless, the evidence is not sufficient to determine the amount of the father's actual physical presence in the United States during the periods of his employment.

The father's earnings statement shows that he reported income in the United States during the relevant eight-year period from 1973 to 1981. The record also contains evidence that the father's eldest child was born in Indiana in 1975, as well as his 1977 federal tax return indicating that he worked in Texas as a laborer that year and resided there with the Applicant's mother and their two children at the time he filed the tax return in February 1978. However, as noted by the Director the father's earnings during the 1973-1981 period varied; for example, while the father reported income of $4927 in 1980 (which was his highest income within that timeframe), in 1974 he earned only $714 (his lowest income). This indicates that the father' employment in the United States may have been seasonal rather than permanent. The father's interview testimony supports such a conclusion, as the father stated that he would come to work in the United States "on a daily basis" and "return to Mexico the same day," and that he did not settle in the United States permanently until approximately 1984. Furthermore, in the affidavit submitted on appeal the father states that when he was not working he would go and visit his grandparents in Mexico, that he met the Applicant's mother there, and that together they "would travel for months to work in labor all over USA." These statements indicate that the Applicant's father spent only part of each year working in the United States from 1973 to 1981. However, as the father does provide any details about his employment it is unclear how much time he was actually physically present in the United States within that eight-year period. We acknowledge the previously submitted affidavit from an individual who attested to having known the Applicant's father since 1975; however, as the affidavit does not contain any information about the father's physical presence in the United States we cannot give it significant evidentiary weight.

Based on the above, we conclude that although the evidence indicates that the Applicant's father worked in the United States within the 1973-1981 period, it is insufficient to determine how long he was actually physically present in the United States given the father's testimony which indicates that his employment was seasonal and that he spent time in Mexico when he was not working. Lastly, even if the Applicant were able to establish that his father was physically present in the United States during this whole eight-year period (which he has not for the reasons discussed above), the remaining evidence is sufficient only to show that he spent a little over one year in the country as a child. Thus, his overall physical presence in the United States prior to the Applicant's 1981 birth abroad would amount to, at best, approximately nine years, less than the 10 years required under former section 301(g) of the Act. However, given the evidentiary deficiencies regarding the father's claimed presence in the United states within the 1973-1981 period, the Applicant has established only that his father was physically present in the United States for a little over a year before he turned 14 years old.

III. CONCLUSION

The Applicant has not met his burden of proof to establish that his father was physically present in the United States for no less than 10 years prior to the Applicant's birth abroad, and that at least 5 of those years occurred after the father's 14th birthday. Consequently, the Applicant has not demonstrated that he acquired U.S. citizenship at birth from his father and is ineligible for a Certificate of Citizenship.

ORDER: The appeal is dismissed.