U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 18000238

Date: JAN. 28, 2022

Appeal of El Paso, Texas Field Office Decision

Form N-600, Application for a Certificate of Citizenship

The Applicant, who was born abroad 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 El Paso, Texas Field Office denied the Form N-600 concluding that that the Applicant did not establish, as required that his mother satisfied the U.S. physical presence requirement under section 309(c) of the Act to transmit her citizenship to him at birth.

On appeal, the Applicant asserts that the Director's decision was in error because the evidence he initially provided with his Form N-600 was sufficient to prove that his mother was physically present in the United States for the requisite one continuous year. The Applicant further states that a brief and additional evidence in support of his appeal will be submitted within 30 days. We have not received a brief, additional evidence, or any other correspondence from the Applicant to date and will consider the record of proceedings complete.

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

I. LAW

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).

The record reflects that the Applicant was born in Mexico in [redacted] 1999. He previously submitted his mother's birth certificate, which shows that she was born in [redacted], Texas in [redacted] 1963. There is no evidence that the Applicant's father is or was a U.S. citizen at any time.

As the Applicant indicated that his parents were never married to each other, we consider his citizenship claim under section 309(c) of the Act, which provides in pertinent part that a person 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."

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 U.S. citizenship claim is "probably true," or "more likely than not." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

II. ANALYSIS

There is no dispute that the Applicant's mother is a U.S.-born citizen. The only issue on appeal is whether the Applicant has demonstrated that his mother was physically present in the United States for a continuous period of one year before he was born in Mexico in [redacted] 1999.

The Applicant represented on his Form N-600 that his mother was in the United States for a three-year period from October 1990 to October 1993. In support, he submitted his mother's Texas marriage and divorce certificates, a birth certificate for his older sister, and affidavits.

The Director subsequently issued a notice of intent to deny (NOID), advising the Applicant that although this initial supporting evidence pointed to the mother's presence in Texas for some time within the 1990-1993 period, it was not adequate to establish that she was actually physically present there for one continuous year. Because the Applicant did not respond to the NOID, the Director denied his Form N-600 concluding that he did not provide sufficient evidence to show that he acquired U.S. citizenship form his mother.

The Applicant does not contest that he did not respond to the NOID, nor does he identify any specific errors in the Director's adverse decision. Rather, he states that he believes the evidence he initially submitted with the Form N-600 was enough to prove his mother's continuous physical presence in the United States from 1990 to 1993.

We have reviewed the entire record of proceedings, and for the reasons explained below agree with the Director that the documents and affidavits the Applicant previously submitted are not sufficient to establish that his mother "more likely than not" was physically present in the United States for a continuous period of one year before he was born.

The mother's marriage certificate shows that she married O-R-P-[1] (who is not the Applicant's father) in [redacted] Texas on [redacted] 1990. The marriage certificate, however, is sufficient to show only that the mother was in Texas on the day of her marriage in 1990, as it does not include her address or any other information that might indicate that she resided in Texas at the time, or that her presence there was not limited to that one specific event. The Applicant has also provided a decree of divorce, which shows that his mother and O-R-P- were divorced in Texas in [redacted] 1993. According to the decree O-R-P-, who petitioned for the divorce, appeared in person before the court on [redacted] 1993, but the Applicant's mother who was the respondent in the case, "having waived issuance,

[1] We use initials to protect the individual's privacy.

service, and return of Citation and having entered an appearance . . . as shown by a sworn waiver," did not appear in court. The decree therefore is insufficient to establish that the Applicant's mother was present in Texas at the time of the divorce. Furthermore, while the court specifically found in the decree that O-R-P- "had been a domiciliary of [Texas] for the preceding six-month period" at the time he filed for divorce in [redacted] 1992, the decree does not include any information about the residence of the Applicant's mother, or her presence in the United States in general. Given the lack of this information and other documents to establish the mother's continued presence in the United States after she married O-R-P- in October 1990 and before they divorced in 1993, the decree is insufficient to determine how long the mother was present in the United States within this period, and if her presence in the country lasted at least one continuous year.

The third document is the birth certificate of the Applicant's older sister, who was born in Texas in [redacted] 1993 to his mother and his father. The certificate indicates that the address of the Applicant's mother at the time was [redacted] in [redacted] Texas, but it does not include any information about how long she had been living there. The Applicant did not provide any other primary evidence, such as his mother's residential, employment, medical, or other records to show where she resided from 1990 through 1993 and when and how long she was actually physically present in the United States within this period.

The remaining evidence consists of three affidavits. When affidavits are submitted to establish 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). Here, we cannot give the affidavits significant weight in establishing the mother's physical presence in the United States for one continuous year within the 1990-1993 period indicated, as they lack sufficient detail and corroborating evidence and are not consistent with other evidence.

The mother's younger brother (who did not provide his date of birth) and his spouse attested in their respective affidavits that from 1990 to 1993 the mother "lived in [redacted] Apartments located in [redacted] Blvd, close to [redacted] Mall in [redacted] Texas." They did not explain how they knew of the mother's residence at that particular address, and they did not provide information about their own residence during this period. Furthermore, their statements about the mother's address in 1993 are inconsistent with the information in the birth certificate of the Applicant's older sister, which indicated that as of [redacted] 1993 the mother lived at [redacted] in [redacted] Texas. The Applicant does not submit documents, such as lease agreements, utility bills, tax, or other records to resolve this inconsistency and to show if, where, and how long his mother lived in Texas during the 1990-1993 period. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988) (providing that an applicant for an immigration benefit must resolve inconsistencies in the record with independent, objective evidence pointing to where the truth lies).

The third affidavit also has limited probative value, as it does not include any specific information about the mother's address, employment, or other activities in Texas that might point to her continuous presence there. The affiant stated that he met the Applicant's mother some time in 1991, when he was working with the Applicant's father, whom he described as the mother's "partner," at a car dealership in Texas. However, at that time the Applicant's mother was still married to O-R-P-, who did not file for divorce until [redacted] 1992. The Applicant does not explain when his parents met, and if and where

they lived together before the birth of his older sister in [redacted] 1993. The affiant further stated that the Applicant's parents invited him to "a family reunion in their apartment complex, [redacted] Apts located in [redacted] Blvd, [redacted] Texas," but he did not specify when that was and how long the Applicant's parents had been living there. Although the affiant affirmed generally that the Applicant's mother lived in [redacted] Texas from 1991 (when he met her) until 1993 (when she returned to Mexico), he did not provide any details about the frequency of his contacts with the mother or any other information to indicate that he had personal knowledge of her continued presence in Texas from 1991 to 1993.

To summarize, the documents the Applicant previously submitted indicated that his mother was in Texas at the time of her marriage in [redacted] 1990, and when she gave birth to the Applicant's sister in [redacted] 1993. However, the Applicant did not provide other primary evidence, such as residential, medical, or employment records to show if and how long his mother was actually physically present in the United States between those two events. The affidavits he submitted do not overcome the lack of such primary documentation, as they are neither sufficiently detailed nor consistent with other evidence in the record and the Applicant has not resolved the inconsistencies.

We conclude, therefore, that the Applicant has not met his burden of proof to establish that his mother was physically present in the United States for a continuous period of one year prior to his 1999 birth in Mexico, as required for transmission of U.S. citizenship under section 309(c) of the Act. As such, he is ineligible for a Certificate of Citizenship and his Form N-600 remains denied.

ORDER: The appeal is dismissed.