U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25213847

Date: MARCH 30, 2023

Appeal of El Paso, 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 under former section 301(a)(7) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(a)(7).

The Director of the El Paso, Texas Field Office denied the Form N-600, concluding that the Applicant did not establish as required that his father was a U.S. citizen. The matter is now before us on appeal.

On appeal, the Applicant submits a brief with additional evidence and renews his citizenship claim.

The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

The record reflects that the Applicant was born in Mexico in [redacted] 1956 to married parents. The Applicant avers that his father, although born in Mexico in 1928, acquired U.S. citizenship at birth from his mother (the Applicant's paternal grandmother), who he claims was a U.S. citizen born in Arizona in 1907.

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, 1028 n.3 (9th Cir. 2001) (internal citation omitted).

Thus, to evaluate the Applicant's citizenship claim we must first determine which laws govern acquisition of citizenship at birth by the Applicant and his father.

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

At the time of the Applicant's birth in 1956 former section 301(a)(7) of the Act[1] governed acquisition of U.S. citizenship. It provided in relevant part that a child born abroad to one U.S. citizen and one noncitizen parent would acquire citizenship from the U.S. citizen parent if that 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."

B. Law in Effect at the Time of the Father's Birth

When the Applicant's father was born in 1928, section 1 of the Act of February 10, 1855, 10 Stat. 604, as incorporated into section 1993 of the Revised Statutes, provided for transmission of citizenship to foreign-born children by their U.S. citizen fathers who at some point resided in the United States. However, in 1994 Congress enacted section 301(h) of the Act[2] to allow acquisition of U.S. citizenship by persons "born before noon (Eastern Standard Time) May 24, 1934, outside the limits and jurisdiction of the United States of [a noncitizen] father and a mother who is a citizen of the United States who, prior to the birth of such person, had resided in the United States."

Because both the Applicant and his father were born abroad, they are presumed to be noncitizens and the Applicant bears the burden of establishing their claims 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 and his father's U.S. citizenship claims are "probably true," or "more likely than not." *Matter of Chawathe*, 25 I&N Dec. at 376.

II. ANALYSIS

The issues on appeal are whether the Applicant has met his burden of proof to show that his father was a U.S citizen and, if so whether he satisfied the conditions in former section 301(a)(7) of the Act to transmit his citizenship to the Applicant at birth. Upon review we conclude that the Applicant has not met this burden.

The evidence in support of the Applicant's and his father's citizenship claims, as supplemented on appeal, consists of the Applicant's birth certificate, his parents' death certificates, his paternal grandmother's baptismal and death certificates, and his father's 1965-1978 social security earnings statement.

As an initial matter, every form, benefit request, or other document must be submitted to the U.S. Citizenship and Immigration Services (USCIS) and executed in accordance with the form instructions. 8 C.F.R. § 103.2(a)(1). Form N-600 instructions provide, in relevant part that applicants who claim

[1] We note that the Director incorrectly referenced former section 301(g) of the Act in the decision. The error does not affect our adjudication on appeal, as the physical presence requirements under former sections 301(a)(7) and 301(g) of the Act were the same and did not change until former section 301(g) was amended in 1986.

[2] See section 101(a) of the Immigration and Nationality Technical Corrections Act of 1994 (INTCA), Pub. L. 103-416 (PDF), 108 Stat. 4305, 4306 (October 25, 1994)).

acquisition of U.S. citizenship from their parent must submit a birth certificate or record of the U.S. citizen parent issued and certified by a civil authority in the country of birth. *See Instructions for Form N-600*, page 8, https://www.uscis.gov/n-600. If such primary evidence is not available, applicants must provide an explanation of the reasons a required document is unavailable and submit secondary evidence to establish eligibility; secondary evidence must overcome the unavailability of the required documents. *Id.* at page 10; 8 C.F.R. § 103.2(a)(2).

Here, the Applicant has not provided his paternal grandmother's birth certificate, as required. Rather, he submitted the grandmother's baptismal certificate, which indicates she was born in Carrizo, Arizona in February 1907 and baptized at a church in Winslow, Arizona in May 1907. The Applicant has not explained whether his grandmother's birth certificate did not exist or was otherwise unavailable, nor has he provided an original written statement from the relevant government or other authority to establish the birth certificate's nonexistence or unavailability. *See* 8 C.F.R. § 103.2(a)(2)(ii) (stating that where a record does not exist, the applicant must submit an original written statement from the relevant government or other authority on government letterhead confirming this; the statement must indicate the reason the record does not exist, and indicate whether similar records for the time and place are available).

The Director determined that the grandmother's baptismal certificate alone was insufficient to establish she was born in Arizona, and we agree. First, the certificate reflects that the grandmother was baptized in Winslow, Arizona approximately three months after her claimed birth in Carrizo, Arizona (which is approximately 100 miles away). Although the Applicant also provided a copy of an entry from the church's baptismal register in Latin,[3] and a baptismal remembrance card listing the grandmother's name and the year "1907,"[4] none of those baptism-related documents identify the source of the information about the grandmother's place and date of birth. We further note that the grandmother's place of birth in the baptismal certificate (Carrizo, Arizona) is inconsistent with the place of birth listed in her death certificate (Winslow, Arizona). Given this inconsistency, the time lag between the grandmother's birth and baptism, and lack of additional contemporaneous evidence to establish where and when she was born, the grandmother's baptismal records are inadequate to overcome the absence of her timely registered birth certificate. As the Applicant does not provide any other documents pointing to his grandmother's U.S. citizenship, we conclude that he has not met his burden of proof to demonstrate that his father was "more likely than not" born to a U.S. citizen mother—a threshold requirement for acquisition of citizenship under section 301(h) of the Act. The Applicant therefore has not shown that his father acquired U.S. citizenship at birth, and we need not address at this time whether his paternal grandmother met the prior residence requirement for transmission of citizenship under section 301(h) of the Act.[5]

[3] The Applicant has not provided a certified English translation of this entry. *See* 8 C.F.R. § 103.2(a)(3) (requiring that any document containing foreign language submitted to USCIS must be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that they are competent to translate from the foreign language into English).

[4] The remembrance card is otherwise illegible.

[5] Instead we reserve the issue. *See I.N.S. v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("As a general rule courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach.").

Moreover, even if the Applicant had established that his paternal grandmother was a U.S.-born citizen (which he did not for the reasons discussed above), the evidence would still be inadequate to support his father's and his own citizenship claims. Specifically, the Applicant did not submit his father's birth certificate as required in the Form N-600 instructions, nor did he establish that such a certificate did not exist or could not be obtained. Rather, the evidence of the claimed parent-child relationship between his father and his paternal grandmother consists solely of the father's 1978 death certificate, which lists the names of his parents, and the Applicant's 1956 birth certificate, which identifies his paternal grandparents. Because both documents were issued many years after the father's claimed 1928 birth,[6] they do not carry the same weight as contemporaneous records in establishing his father's date of birth and parentage. *See e.g.*, *Matter of Lugo-Guadiana*, 12 I&N Dec. 726, 729 (BIA 1968) (A delayed birth certificate does not necessarily offer conclusive evidence of paternity even if it is unrebutted by contradictory evidence; it must instead be evaluated in light of the other evidence of record and the circumstances of the case).

The Applicant has not presented any additional contemporaneous or historical documentation to establish his father's date and place of birth, as well as his parentage. Although in response to the Director's notice of intent to deny the Applicant referenced his father's 1940 census record, "card manifest," and affidavits, this evidence is not part of the record and we are not able to assess its probative value in adjudicating the Applicant's citizenship claim.

In conclusion, the preponderance of the evidence in the record is insufficient to establish that the Applicant's father acquired U.S. citizenship under section 301(h) of the Act through birth to a U.S. citizen mother. Consequently, the Applicant has not demonstrated that he was born to a U.S. citizen father, as required under former section 301(a)(7) of the Act.[7] As such, he is ineligible for a Certificate of Citizenship and his Form N-600 remains denied.

ORDER: The appeal is dismissed.

[6] The birth certificate (which is not accompanied by the requisite English translation) indicates that the Applicant's father was 30 years old at the time the Applicant's birth was registered in January 1957. However, if the father was born in [redacted] 1928 as the Applicant claims, he would have been 28 years old at the time.

[7] Because the issue of the father's citizenship is dispositive of the Applicant's citizenship claim, we need not address whether his father met the U.S. physical presence requirements under former section 301(a)(7) of the Act, and reserve the issue instead. *See I.N.S. v. Bagamasbad*, *supra*.