U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26480997

Date: MAY 3, 2023

Motion on Administrative Appeals Office Decision

Form N-600, Application for Certificate of Citizenship

The Applicant, who was born abroad in 1993, seeks a Certificate of Citizenship to reflect that he acquired U.S. citizenship at birth from his father under section 301(g) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(g), as his out-of-wedlock child.

The Director of the Charlotte Amalie, U.S. Virgin Islands Field Office denied the Form N-600, concluding in part that the Applicant did not establish he was born to a U.S. citizen father. We rejected the Applicant's appeal as untimely pursuant to the regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(l). The matter is now before us on a combined motion to reopen and reconsider[1] the rejection of his appeal.

The Applicant submits a brief and requests us to reconsider the rejection of his late appeal as a matter of discretion and to give him another opportunity to establish his U.S. citizenship claim. He also submits supplemental evidence concerning his citizenship claim, which includes a partial copy of his Venezuelan hospital birth record, and a copy of a request for disclosure of his father's U.S. medical records.

Upon review, we will dismiss the motions.

A motion to reopen is based on documentary evidence of new facts, and a motion to reconsider must show that our decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services' (USCIS) policy to the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(2)-(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested benefit; however, a motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

A review of any motion is limited to the basis for the prior decision. Accordingly, we first examine any new facts and arguments to the extent that they pertain to our rejection of the Applicant's untimely appeal.

[1] The Applicant indicated on the instant Form I-290B, Notice of Appeal or Motion that he is filing an appeal; however, as we do not have jurisdiction over appeals of our decisions, we will treat the appeal as a combined motion to reopen and reconsider the rejection of the Applicant's prior appeal.

The Applicant explains that he submitted his appeal timely, but USCIS rejected it twice—for missing address and payment, and for an incomplete fee waiver request. He states that by the time he corrected these deficiencies his appeal was filed late. The Applicant does not claim, however, that we incorrectly applied the law or USCIS policy in rejecting his untimely appeal, or that there are new facts that would warrant reopening of that decision. Rather, he asks that we accept his late appeal and consider it on the merits as a matter of discretion. We cannot grant this request, as we do not have authority (discretionary or otherwise) to consider an untimely appeal. *See* 8 C.F.R. § 103.3(a)(2)(v)(B)(l) (providing that an appeal which is not filed within the time allowed must be rejected as improperly filed). Furthermore, when we reject an appeal, the appeal does not retain a filing date and there is no merits-based decision for us to review on motion. 8 C.F.R. § 103.2(a)(7)(ii). Thus, while we acknowledge the Applicant's explanation for the late filing, we must dismiss his motion to reopen and reconsider our rejection of his appeal.

Furthermore, we note that the supplemental evidence concerning the substance of the Applicant's citizenship claim is not sufficient to overcome the basis for the denial of his Form N-600. As stated, the Director determined in part that the Applicant did not establish he was born to a U.S. citizen father, because he did not submit his father's Certificate of Citizenship, Naturalization, or Repatriation, Consular Report of Birth Abroad, or other acceptable evidence to establish that his father was a U.S. citizen at the time the Applicant was born. As the Applicant still does not provide the requisite documentation to establish he was born to a U.S. citizen parent, he has not overcome the basis for the denial of his Form N-600.

The Director further noted that the Applicant also did not show he met the relevant conditions in section 309(a) of the Act, 8 U.S.C. § 1409(a), which applies to children born out of wedlock to U.S. citizen fathers. Specifically, the Director concluded that the Applicant did not establish a blood relationship with his father by clear and convincing evidence, as required in section 309(a)(1) of the Act. We acknowledge the submission of an undated hospital record as evidence of paternity; however, because the Applicant has not demonstrated that his father is a U.S. citizen – a threshold requirement for acquisition of U.S. citizenship under section 301(g) of the Act, we decline to evaluate the hospital record in the first instance, as it would not change the outcome.[2]

In conclusion, the Applicant has not shown that we erred as a matter of law or USCIS policy in rejecting his late appeal, nor has he established new facts and evidence that would otherwise warrant reopening of his citizenship proceedings and reevaluating the merits of his citizenship claim. His Form N-600 therefore remains denied.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

[2] *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).