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U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF Y-M-E-E-O-

DATE: DEC. 23, 2015

APPEAL OF HOUSTON FIELD OFFICE DECISION

APPLICATION: FORM N-600, APPLICATION FOR CERTIFICATE OF CITIZENSHIP

The Applicant, a native of Mexico, seeks a Certificate of Citizenship. *See* Immigration and Nationality Act (the Act) § 301(g), 8 U.S.C. § 1401(g), (amended by Pub. L. No. 99-653, 100 Stat. 3655 (1986)). The Field Office Director, Houston, Texas, denied the application. The matter is now before us on appeal. The appeal will be dismissed.

The record reflects that the Applicant was born in Mexico on , to a U.S. citizen father and a non-U.S. citizen mother. The Applicant's parents were married prior to the Applicant's birth. The Applicant seeks a certificate of citizenship based on the claim that he acquired U.S. citizenship at birth through his father.

In a September 17, 2014, decision, the Director found that the Applicant did not establish that his father was physically present in the United States for the requisite period of time prior to the Applicant's birth as required by former section 301(g) of the Act, as the record indicated that the Applicant's father did not enter the United States until 1996, when the Applicant was years of age. The Director denied the Form N-600, Application for Certificate of Citizenship, accordingly.

On appeal, the Applicant claimed that his father first entered the United States in 1967, prior to the Applicant's birth. The Applicant, through counsel,[1] submitted a Freedom of Information Act (FOIA) request to U.S. Citizenship and Immigration Services (USCIS) to request information from his father's A-file related to his father's N-600, and the date his father first entered the United States. On November 13, 2014, the Applicant submitted a letter to request additional time to submit a brief and additional evidence as he was waiting for the results of the FOIA request.

On July 15, 2015, we issued a Notice of Intent to Deny (NOID) the Applicant's appeal, granting the Applicant's request to submit a brief and additional evidence based on the results of his FOIA request. We noted that USCIS responded to the Applicant's FOIA request on January 13, 2015, and

[1] The record indicates that at the time the Applicant filed his Form N-600 on April 18, 2014, the Applicant was properly represented by counsel. However, in filing the Form I-290B, Notice of Appeal or Motion, on October 16, 2014, there is no indication that the Applicant was represented by counsel, as the Applicant signed the Form I-290B himself, and there is no new Form G-28, Notice of Entry of Appearance as Attorney or Representative, as required by regulation under 8 C.F.R. § 292.4(a).

therefore granted the Applicant 30 days, until August 15, 2015, to respond to the NOID. As we have not received a response to the NOID, the appeal will be dismissed.

We conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

Because the Applicant was born abroad, he is presumed to be a foreign national and bears the burden of establishing his claim to U.S. citizenship by a preponderance of credible evidence. *See Matter of Baires-Larios*, 24 I&N Dec. 467, 468 (BIA 2008). The "preponderance of the evidence" standard requires that the record demonstrate that the Applicant's claim is "probably true," based on the specific facts of each case. *See 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)).

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. INS,* 247 F.3d 1026, 1028 n.3 (9th Cir. 2001). The Applicant in this case was born in . Accordingly, former section 301(g) of the Act, as in effect prior to enactment of the Act of November 14, 1986, Pub. L. 99-653, 100 Stat. 3655, applies to this case.[2]

Former section 301(g) of the Act stated, in pertinent part, that the following shall be nationals and citizens of the United States at birth:

> [A] person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, 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 ...

Therefore, in the present matter, the Applicant must establish that his father resided in the United States for ten years between his father's birth on and the Applicant's birth on and that at least five of those years followed the date on which the Applicant's father turned 14 years of age.

The record indicates that the Applicant's father submitted his Form N-600 on July 29, 1996. According to the Director, on page 1, part 3, item 2, of the Form N-600, indicated that the first time he arrived in the United States was on May 13, 1996, when the Applicant was years of age. The Applicant therefore did not establish that his father met the physical presence requirement of residing in the United States for ten years prior to the Applicant's birth.

On appeal, the Applicant contends that the information on the father's Form N-600 was in error, and

[2] Former section 301(a)(7) was re-designated as section 301(g) upon enactment of the Act of October 10, 1978, Pub. L. 95-432, 92 Stat. 1046. The substantive requirements of the provision, however, remained the same until November 1986.

that his father entered the United States for the first time in 1967. In support of this contention, the Applicant submitted copies of photographs of his father taken in the United States in 1967 and 1968, and a letter written by his father from the United States in 1967. The Applicant also submitted a copy of his father's Border Crossing Card, issued on October 9, 1967, with the expiration date of October 9, 1971.

While this documentation indicates that the Applicant's father did enter the United States prior to 1996, the date his father claimed as his first entry into the United States on his Form N-600, the evidence does not establish the amount of time that his father resided in the United States prior to the birth of the Applicant.

Therefore, the Applicant did not establish that his father resided in the United States for ten years between his father's birth on [redacted] and the Applicant's birth on [redacted] with at least five of those years following [redacted], the date on which the Applicant's father turned 14 years of age.

The Applicant also submitted copies of the passports of his parents, which include B-2 nonimmigrant visas issued in 1982; however, as the nonimmigrant visas were issued after the Applicant's birth, the visas do not support the Applicant's claim that his father met the physical presence test of 10 years prior to his birth.

The evidence on the record does not establish that the Applicant's father resided in the United States for the period of time as required by statute.

It is the Applicant's burden to establish the claimed citizenship by a preponderance of the evidence. Section 341(a) of the Act, 8 U.S.C. § 1452(a); 8 C.F.R. § 341.2(c). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of Y-M-E-E-O-*, ID# 11299 (AAO Dec. 23, 2015)