U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35287010

Date: DEC. 19, 2024

Motion on Administrative Appeals Office Decision

Form N-600, Application for Certificate of Citizenship

The Applicant seeks a Certificate of Citizenship to reflect that she acquired U.S. citizenship from her U.S. citizen father at birth under former section 301(a)(7) of the Act, 8 U.S.C. § 1401(a)(7) redesignated as section 301(g) of the Act, 8 U.S.C. § 1401(g), by Act of October 10, 1978, Pub. L. 95-432, 92 Stat. 1046. The Director of the Chicago, Illinois Field Office denied the Applicant's Form N-600, Application for Certificate of Citizenship, after concluding the Applicant did not meet her burden of establishing that she met the requirements of the above section of the Act. We dismissed a subsequent appeal. The matter is now before us on motion to reopen.

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). Upon review, we will dismiss the motion.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). Because the scope of a motion is limited to the prior decision, we will only review the latest decision in these proceedings. 8 C.F.R. § 103.5(a)(1)(i), (ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

On motion, the Applicant submits her second marriage certificate and her first divorce certificate. The Applicant asserts that these new facts establish eligibility as they demonstrate relevant name changes for her and for her mother for purposes of resolving identity issues discussed in our prior decision.

I. LAW

The applicable law for acquiring U.S. citizenship at birth is determined by the law in effect at the time of the individual's birth. *See, e.g.*, *Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1029 n.3 (9th Cir. 2001). The Applicant claims she was born abroad in Mexico in [redacted] 1957 to married parents and that her father is a U.S. citizen born in Puerto Rico in [redacted] 1930. The Applicant does not assert that her mother is a U.S. citizen. Therefore, the Applicant seeks a Certificate of Citizenship

solely through her claimed U.S. citizen father pursuant to former section 301(a)(7) of the Act, in effect at the time of her birth.[1]

Former section 301(a)(7) of the Act provides, in pertinent part, that a child born abroad to one noncitizen and one U.S. citizen parent will be a national and a citizen of the United States at birth if the 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." Physical presence does not need to be continuous; rather it is counted in the aggregate. *See generally* 12 *USCIS Policy Manual* H.2(E)(1), https://www.uscis.gov/policy-manual. Additionally, the Form N-600 instructions as in effect at the time the Applicant filed her Form N-600 in 2023 state that an applicant must submit evidence of all legal name changes. *See generally* 8 C.F.R. § 103.2(a)(1) (providing that every benefit request submitted to the DHS must be executed and filed in accordance with the form instructions and that such instructions are incorporated into the relevant regulations). 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.*

Because the Applicant was born abroad, she is presumed to be a noncitizen and bears the burden of establishing their 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 her claim is "probably true," or "more likely than not." *Matter of Chawathe*, 25 I&N Dec. at 376.

I. ANALYSIS

As noted above, the Applicant must establish that she was born to a U.S. citizen parent who, prior to the Applicant's birth, 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. Section 301(a)(7) of the Act. The Applicant claims she was born in Mexico in [redacted] 1957 to a U.S. citizen father who was born in Puerto Rico in [redacted] 1930. Accordingly, the Applicant must establish that: (1) she was born to the U.S. citizen father, and (2) the father was physically present in the United States or outlying possessions for ten years prior to the Applicant's birth in [redacted] 1957, at least five of which were after [redacted] 1944 when the father attained the age of fourteen years.[2]

A. U.S. Citizen Parent

The Applicant, A-S-,[3] claims she was born with the name A-D-Sa- in Mexico in [redacted] 1957 to her U.S. citizen father, S-D-. In support of this claim, the Applicant submitted, in part, a copy of a Mexican

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[1] The Director erroneously referred to section 301(g) of the Act as the applicable law in the decision. However, this is harmless error as the physical presence requirements of former section 301(a)(7) remained the same after it was re-designated as section 301(g) by the Act of October 10, 1978, Pub. L. 95-432, 92 Stat. 1046 in 1978 and until 1986.

[2] Puerto Rico is included in the statutory definition of the "United States" at section 101(a)(38) of the Act, 8 U.S.C. § 1101(a)(38).

[3] Names are withheld to protect the individuals' identities.

marriage certificate showing that her claimed parents, S-D- and A-Sa-, were married in 1955 in Mexico; her claimed Mexican birth certificate listing A-D-Sa- as the child of S-D-, the father, and A-Sa-D-, the mother; and a divorce decree showing that her claimed parents, identified as S-D- and A-D-, were divorced in 1973 and listing as their child, A-D-, born in 1957.[4] The Applicant also submitted a divorce decree for her marriage to J-P- showing the listed parties, J-P- and A-P-, were married in 1984 and divorced in 1988; a U.S. marriage certificate for the Applicant's subsequent marriage to M-S- in 1990, listing the parties as A-P- and M-S-; and her current driver's license identifying her name as A-S-.[5]

In our prior appellate decision, incorporated here by reference, we concluded that the Applicant did not establish that she was born to a U.S. citizen parent because she had not submitted: (1) a marriage certificate for her 1984 marriage to J-P- to show that A-P-'s maiden name was A-D-Sa (or A-D-); and (2) a divorce decree for the 1977 marriage between A-D-S- (a.k.a. A-D-) and M-S-, as required by the Form N-600 instructions. The Applicant provides both of these documents on motion, establishing that the Applicant is in fact A-D-Sa- born to a U.S. citizen father, as shown on the 1957 Mexican birth certificate; therefore, the Applicant has established by a preponderance of the evidence that she was born abroad to a U.S. citizen parent as is required under former section 307(a)(7) of the Act. Nevertheless, the Form N-600 application cannot be approved for the reasons discussed below.

B. U.S. Citizen Parent's U.S. Physical Presence

In the denial, the Director also concluded that the Applicant did not establish that her U.S. citizen parent satisfied the physical presence requirements of former section 301(a)(7) of the Act because the Applicant had not provided sufficient evidence of the father's physical presence and, with respect to an affidavit discussing the father's physical presence, she had not established that the individual attesting to the father's U.S. physical presence was her mother, as claimed. On appeal, the Applicant claimed that previously provided evidence, including her mother's social security statement and her father's application for a social security number, supports a finding that her father had the requisite U.S. physical presence prior to the Applicant's birth in 1957. Additionally, the Applicant provided new evidence regarding her father's U.S. wages on appeal.

On the Form N-600, the Applicant claimed that her father was born in Puerto Rico in [redacted] 1930 and was physically present in the United States from his birth until his death in [redacted] 2005. To support this claim, she initially provided a birth certificate showing that her father was born in Puerto Rico in 1930 and an affidavit from her mother, who stated that the Applicant's father resided in Puerto Rico from his birth in 1930 until 1950, that the father resided in Michigan from 1950 to 1955; and that the father resided with A-D- in [redacted] Illinois from 1955 until their divorce in 1973. However, the mother in the same affidavit also stated that she first met S-D- in Mexico in 1952; therefore, the

[4] We noted in our prior decision that the mother's names on the 1955 marriage certificate (A-Sa-) and as shown on the Applicant's claimed birth certificate (A-Sa-D-), while different, are consistent with the mother adopting her husband's family name as part of her married name. The mother's married name is also consistent with the name shown on the divorce decree (A-D-). The date of birth and name of one of their children named in the divorce decree (A-D-) is also consistent with the date of birth and name shown on the Applicant's claimed birth certificate (A-D-Sa-).
[5] The last name for the Applicant's spouse, M-S-, in the 1990 marriage certificate and for the Applicant, A-S-, in her driver's license are the same.

affidavit indicates that the Applicant's mother did not have personal knowledge of S-D-'s residence in the United States or an outlying possession prior to 1952, and the record also lacks such evidence.

With respect to specific evidence of the father's U.S. physical presence, the Applicant had provided a July 1950 application for a Social Security account number on which S-D- listed a Michigan mailing address and claimed to be working in Michigan and a December 1954 affidavit of support on which the Applicant's father listed his [redacted] Illinois residential address. The Applicant also included employment evidence in the form of: (1) a 1954 letter from a U.S. employer in Illinois who attested that the father worked for the company from October 1950 to an unspecified date, and then from December 1953, earned $1.35 per hour, and worked 40 to 48 hours each week (an annual salary of between $2,808 and $3,369.60); and (2) a Summary of Federal Insurance Contributions Act (FICA) statement from the Social Security Administration (SSA) showing S-D-had the following annual U.S. earnings during the relevant period ending with the Applicant's birth in [redacted] 1957: $2,482.24 in 1951; $2,289.16 in 1952; $2,454.74 in 1953; $3,600 in 1954; $2,695.24 in 1955; $4,200 in 1956; and $4,200 in 1957; and (3) evidence that her mother received an increase to her social security benefits after the father died in 2005. The information in these documents taken together supports a conclusion that the Applicant's father worked in the United States on a full-time basis during from approximately October 1950 to the Applicant's birth in [redacted] 1957, and supports a finding that he was physically present in the United States during that period for approximately six years and seven months.

With respect to the remaining evidence, the Applicant had provided a statement from her mother, who attested that S-D- had resided in the United States from his birth in Puerto Rico. However, the mother also stated that she met S-D- in Mexico in 1952. Because the mother did not claim to have personal knowledge of the father's physical presence in the United States prior to meeting him in 1952, her statement does not establish his U.S. physical presence for any additional periods of time.

Here, although the record shows that the Applicant's U.S. citizen father was physically present in the United States or an outlying possession on the day of his birth in 1930, and then for a period of approximately six years and seven months from 1950 until the Applicant's birth in [redacted] 1957, the record does not contain additional evidence to establish his U.S. physical presence for the remaining period of approximately 3 years and 5 months. Consequently, it remains that the Applicant has not established that her U.S. citizen parent was physically present in the 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, as required to satisfy section 301(a)(7) of the Act.

III. CONCLUSION

Although the Applicant has submitted additional evidence of her legal name changes in support of the motion to reopen sufficient to show that she was born to a U.S. citizen parent, the Applicant has not established eligibility because she has not shown that her U.S. citizen parent satisfied the physical presence requirements at section 301(a)(7) of the Act. Therefore, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen is dismissed.