U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34307348

Date: DEC. 20, 2024

Appeal of El Paso, Texas Field Office Decision

Form N-600, Application for Certificate of Citizenship

The Applicant seeks a Certificate of Citizenship to reflect that she acquired citizenship at birth from her father under former section 301(g) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(g).[1]

The Director of the El Paso, Texas Office initially denied the application, concluding that the Applicant did not establish that her U.S. citizen father satisfied the U.S. physical presence requirements for transmission of citizenship. We dismissed a subsequent appeal and then also dismissed a combined motion to reopen and reconsider as untimely. The Director reopened the matter and denied the application for a second time, again concluding that the Applicant had not satisfied the U.S. physical presence requirements for transmission of citizenship. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

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.

II. LAWS

The Applicant was born in Mexico in 1979 to married parents. The Applicant's father, A-C-T-,[2] was a U.S. citizen born in Texas in [redacted] 1949, and her mother, N-A-R-R-, was a citizen of Mexico. The record reflects that the father was previously married to J-M- in 1966, and there is no evidence that his first marriage was dissolved before he married the Applicant's mother in 1976.

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).

At the time of the Applicant's birth in 1979, former section 301(g) of the Act governed acquisition of U.S. citizenship by children born abroad to one U.S. citizen and one noncitizen parent. That section

[1] Amended by Act of November 14, 1986, Pub. L. No. 99-653, 100 Stat. 3655.
[2] Names withheld to protect the individuals' privacy.

provided, in relevant part, that a child will be a national and citizen of the United States at birth if the child's 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."

If a child was born out of wedlock to a U.S. citizen father, they must also satisfy certain paternity and legitimation requirements set forth in current section 309(a) of the Act, 8 U.S.C. § 1409(a),[3] to acquire U.S. citizenship from the father.

Because the Applicant was born abroad, she is presumed to be an alien and bears the burden of establishing her claim to U.S. citizenship by a preponderance of credible evidence. *Matter of Baires-Larios*, 24 I&N Dec. 467, 468 (BIA 2008).

II. ANALYSIS

The issues on appeal are: (1) whether the Applicant has demonstrated that her U.S. citizen father was physically present in the United States for a period of 10 years before her birth in 1979, with at least 5 of those years occurring after her father's 14th birthday in [redacted] 1963; and (2) whether she has otherwise shown that she acquired citizenship at birth from her father either by establishing the validity of her parent's marriage for purposes of showing that she was born in wedlock or, in the alternate, establishing that she was legitimated. We have reviewed the record and for the reasons explained below conclude that the Applicant has not met the burden of establishing her claim to U.S. citizenship.

A. The Father's U.S. Physical Presence

The Applicant represented on the Form N-600 application that her father was present in the United States from his birth in 1949 until he passed away in 1996. In support, she submitted her father's birth, baptismal, and marriage certificates; his U.S. earnings report; school and selective service registration records; evidence regarding the physical presence of other family members, and statements from various relatives. The Director determined that the evidence only establishes that, prior to the Applicant's birth, the Applicant's father was physically present in the United States for, at most, six years after the age of 14 years. In our prior appellate decision, based on our de novo review of the record, we concluded that the Applicant had established that her father had approximately five years of U.S. physical presence prior to the Applicant's birth in 1957, a determination that we affirm here.

1. The Father's U.S. Physical Presence from 1949 to 1963, Prior to Age 14

The father's birth and baptismal certificates reflect that he was born in Texas in [redacted] 1949, that he was baptized there in [redacted] the same year; therefore, at most, they indicate that the father was in the United States for three months as a child.

[3] Former section 309(a) was amended by the Act of November 14, 1986, which provides that the current provision applies to children, such as the Applicant here, who were not yet 18 years of age on that date.

The father's cousin, L-S-, provided three statements in which he claimed that the father had been in the United States; however, the statements do not contain sufficient probative information to support the Applicant's claim that her father was physically present in the United States for the entire period from 1949 to the father's 14th birthday in1963. In his first statement, L-S- claimed that he and the Applicant's father were together from 1951 to 1960. According to L-S- in his subsequent statements, when he arrived in [redacted] Texas in 1951, the Applicant's father already lived there with his family. The cousin further attested that he resided in different areas of [redacted] where he attended elementary and middle schools until 1960, and that during this time he and the Applicant's father would often take a bus to go and play at the parks and playgrounds around the city. The cousin explained that he relocated to California in 1960, and that he and the Applicant's father spent time together every other summer either in Texas or in California. We determine the affidavits' 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 L-S-' statements significant weight because they lack sufficient probative details and are not corroborated by other evidence. For example, although L-S- indicated that he went to school in Texas, he offered no information about the father's school attendance in the United States during this period. In addition, although the cousin listed various places he had lived in Texas, he did not include any details or specific claims regarding the father's residence(s) in the United States. The cousin's general testimony indicates that he played with the Applicant's father in [redacted] during the 1951-1960 timeframe when the Applicant's father was between the ages of 2 and 11 (and L-S- would have been between the ages of 4 and 13, based on his 1947 date of birth) and that they thereafter visited each other; however, this is insufficient to establish the amount of time the Applicant's father was physically present in the United States before he turned 14 years old in 1963, apart from the first three months following his birth. Consequently, L-S-' statements do not establish that the father had any particular amount of physical presence in the United States during the period preceding his 14th birthday in 1963.

On appeal, the Applicant asserts that the Director failed to address other evidence she had provided relating to other relatives that she claims shows her father was residing in the United States from his birth until age 17. This evidence includes his mother's (the Applicant's paternal grandmother's) earnings and leave statements for the period of 1951 to 1973, U.S. birth and death certificates for some of the father's siblings born in 1956 and 1958, and a news article that the Applicant claims shows that her father's mother was involved in a car accident in the United States in 1965.[4] Although these documents reflect that his mother and his siblings were physically present in the United States on certain dates and for certain periods of time (both before and after his 14th birthday), the same evidence does not establish that the Applicant's father also was physically present. For example, a January 1964 California school record for her father reflects he had been attending school in [redacted] Mexico during the same years that his mother was reporting U.S. income. Although the Applicant contends on appeal that the contradictory information in her father's 1964 school record should be disregarded, she had provided her father's school record as primary evidence of his U.S. physical presence and has not demonstrated that it now should be disregarded in favor of the secondary evidence relating to his mother and siblings. Instead, the Applicant must resolve discrepancies in the record with independent,

[4] The [redacted] 1956 birth certificate for J-J-T- contains information that is inconsistent with other evidence in the record. The Applicant claims that her paternal grandmother was born in [redacted] 1927; therefore, the grandmother would have been 28 years of age when the child named J-J-T- was born in 1956; however, the birth certificate reflects that the birth mother was 26 years old.

objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). As the Applicant has not resolved the discrepancies in the documents she provided, the evidence relating to the U.S. physical presence of the Applicant's paternal grandmother and the father's siblings is not sufficient to establish her father's own U.S. physical presence for any period. The record therefore establishes by a preponderance of the evidence that the Applicant's father was physically present in the United States for a period of three months prior to age 14.

2. The Father's U.S. Physical Presence from 1963 to 1979, After Turning Age 14

The Applicant's evidence does not establish that her father accumulated the remainder of the required presence in the United States after his 14th birthday in [redacted] 1963 and before the Applicant's 1979 birth in Mexico.

Additional birth certificates for the father's other siblings born in 1964 and 1971 show that they and the Applicant's paternal grandmother were in [redacted] on the dates of birth but the documents do not contain information showing that the Applicant's father also was present in [redacted].[5]

As discussed, the father's school records reflect that he enrolled in a California school "to learn English" in January 1964 when he was about 15 years old, and that he attended that school for 10 days; however, as discussed above, the same record shows that he was a student at a school in [redacted] Mexico for an unspecified period of time prior to the enrollment. Although the Applicant also submitted a 1964 record from a high school in [redacted] Texas, it reflects that her father did not earn any credits and does not indicate how long he attended that particular school. As a consequence, the father's educational records are sufficient only to establish that he was present in the United States for ten days in 1964 in order to study English.

The father's marriage certificate with his first wife, J-M-, reflects that they claimed to be residents of [redacted] when they married on [redacted] 1966, and his subsequent application for a social security number also reflects that he was claiming to reside in [redacted] on February 17, 1966. The Applicant also provided evidence that her father registered with the U.S. Selective Service System in June 1967, that he had claimed a Texas address when registering, and that he completed three evaluations in [redacted] through June of 1968. Moreover, the Applicant included a 2017 summary statement of all of her father's Federal Insurance Contributions Act (FICA) earnings, including his earnings from 1968 through 1970. In our prior 2020 appellate decision, we concluded that this evidence was sufficient to establish a period of a little over four years of U.S. physical presence during the relevant period prior to the Applicant's birth in 1979.

The record also includes affidavits from the father's younger brother, J-J-T-, and the brother's spouse, who stated that the father had lived in [redacted] with his first wife, J-M-, from 1972 until he died in 1996 (a period that overlaps with the father's 1976 marriage to the Applicant's mother), and that the two couples had been neighbors. However, the general uncorroborated assertions that the father had lived in the United States since 1972 are insufficient to establish how much time he was physically present during the relevant period that ended with the Applicant's birth in 1979. Moreover, their

[5] The [redacted] 1964 birth certificate for M-T- reflects that the Applicant's paternal grandmother was 35 years of age; however, she would have been 36 years of age at the time.

assertions that the father and J-M- resided together in [redacted] until 1996 are inconsistent with information on the father's death certificate, which indicates that the father died in [redacted] Mexico and was divorced when he died in 1996.

We acknowledge that the brother's spouse executed a second affidavit indicating that she and the Applicant's father recorded a single in a Texas studio between 1975 and 1976, and that she provided a photocopy of the record. She did not specify, however, when the recording took place or how much time the Applicant's father spent in Texas between 1975 and February 1976, when he went to Mexico to marry his second spouse (the Applicant's mother), or if he was in Mexico for any length of time thereafter prior to the Applicant's birth. Thus, while her statements and supporting evidence indicate that the father was physically present in Texas some time in 1975 and 1976, they are insufficient to establish how long he was there.

Another relative named E-V- stated in her affidavit that the Applicant's father lived in Texas with his first wife, J-M-, from 1966 until 1986, and that the Applicant was raised by the Applicant's grandmother and her father after her mother abandoned her at the age of 9 months. The relative did not provide any other information regarding the father's actual presence in the United States within the 13-year period between 1966 and the Applicant's birth in 1979. Moreover, E-V-'s claim that the father resided with J-M- in the United States from 1966 until 1986 conflicts with the claims from J-J-T- and his wife that the father had resided with J-M- in [redacted] from 1972 until 1996. The Applicant must resolve this additional contradictory information with independent, objective evidence. *Matter of Ho*, 19 I&N Dec. at 591-92.

Based on the above, we conclude that the totality of the evidence is sufficient to show that the Applicant's father was physically present in the United States for a total of approximately five years, including about three months immediately following his birth and a little over four years after he turned 14 years of age in 1963. As this is significantly less than the overall 10-year period required under former section 301(g) of the Act, the Applicant has not established that her father met the physical presence conditions to transmit his citizenship to her at birth.

B. Validity of the Father's Marriage to the Applicant's Mother

In our prior 2020 appeal decision, we concluded that, as an additional matter, the evidence is also insufficient to allow us to determine whether the father's marriage to the Applicant's mother was valid under Mexican law and, thus, the Applicant had not shown she was born in wedlock for the purposes of acquisition of U.S. citizenship under former section 301(g) of the Act. Specifically, the record includes two marriage certificates of the Applicant's father. One certificate reflects that the father married his first spouse, J-M-, in [redacted] Chihuahua in 1966. The other certificate shows that he married the Applicant's mother in [redacted] Chihuahua in 1976. Both certificates list the father's civil status as "single." Moreover, in their statements, both J-J-T- and his spouse stated that the Applicant's father had resided with his first wife, J-M-, from 1972 until 1996 and E-V- said the father lived with J-M- from 1966 until 1986.

The Applicant has not claimed that her father was divorced from his first spouse when he married her mother in 1976, indicating on the Form N-600 only that her father was married twice, nor has she submitted evidence that her father's first marriage was terminated, as required by the Form N-600

instructions.[6] Consequently, the Applicant has not established that her father was free to marry her mother in 1976. In the alternate, if her father was not free to marry, the Applicant has not established that his second marriage to the Applicant's mother was nevertheless valid under the law of Chihuahua, Mexico in effect at the time.[7]

On appeal, the Applicant asserts that she was born as a child of marriage under the civil code of Chihuahua, Mexico and, in the alternate, that she was legitimated under the laws of Mexico and therefore acquired citizenship under section 309(a) of the Act as a child born out of wedlock to a U.S. citizen father. However, the physical presence requirements of former section 301(g) still apply to citizenship claims under section 309(a) of the Act. Thus, the lack of evidence establishing her father's U.S. physical presence in the United States prior to the Applicant's birth in 1979 is dispositive of her citizenship claim under both provisions. As a consequence, we need not reach, and therefore reserve, the issue regarding the validity of her parent's marriage for purposes of establishing that the Applicant was born in wedlock and, in the alternate, whether or not the Applicant was legitimated. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *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 the applicant did not otherwise meet their burden of proof).

III. CONCLUSION

The Applicant has not met her burden of proof to establish that her U.S. citizen father had the required physical presence in the United States to transmit his citizenship to her at birth, as required by former section 301(g) of the Act, or alternately, under current section 309(a) of the Act. The Applicant is therefore ineligible for a Certificate of Citizenship and her Form N-600 remains denied.

ORDER: The appeal is dismissed.

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[6] *See* Page 9, Instructions for Form N-600, https://www.uscis.gov/n-600 (requiring an applicant to submit documents showing marriage termination, if relevant, including a certified divorce decree, death certificate, or annulment document).

[7] *See, e.g.*, Article 144 of the 1974 Civil Code of the State of Chihuahua (the Civil Code), https://leyes-mx.com/codigo_civil_chihuahua.htm (prohibiting marriages where one of the parties is already married to someone else) and Article 236 of the Civil Code (providing that the previous marriage existing at the time the second marriage is contracted cancels the second marriage, even if the second marriage is entered into in good faith).