U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27640545

Date: AUG. 15, 2023

Appeal of Jacksonville, Florida Field Office Decision

Form N-600, Application for Certificate of Citizenship

The Applicant, who was born abroad in 1976 to unmarried parents, seeks a Certificate of Citizenship to reflect that she acquired citizenship at birth from her U.S. citizen father under former section 301(a)(7) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(a)(7).[1]

The Director of the Jacksonville, Florida Field Office denied the Form N-600, concluding that the Applicant did not establish she was legitimated by her father, as required. The matter is now before us on appeal.

On appeal, the Applicant references previously provided evidence and asserts that her father legitimated her under the law of Chihuahua, Mexico. She further states that she disagrees with the Director's decision, because U.S. Citizenship and Immigration Services (USCIS) approved her older sibling's citizenship claim under the same circumstances.

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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

The record reflects that the Applicant was born in [redacted] Mexico in [redacted] 1976 to unmarried parents. Her father (now deceased) was a U.S. citizen born in California in January 1929, and her mother is a citizen of Mexico. The parents did not marry until 1999, when the Applicant was 22 years old.

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).

[1] Former section 301(a)(7) of the Act was re-designated as section 301(g) of the Act by Act of October 10, 1978, Pub. L. No. 95-432, 92 Stat. 1046, but its substantive provisions did not change until 1986.

At the time of the Applicant's birth in 1976, former section 301(a)(7) of the Act governed acquisition of U.S. citizenship by persons born abroad. It provided, in relevant part, that a person born outside the United States to one U.S. citizen and one noncitizen parent would be a national and citizen of the United States at birth if the person's U.S. citizen parent "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."

However, a person who like the Applicant was born to unmarried parents, may acquire citizenship from the U.S. citizen father only if certain legitimation requirements set forth in section 309(a) of the Act, 8 U.S.C. § 1409(a), are also met. Prior to November 14, 1986, that section ("old" section 309(a)) required paternity of a child to be established by legitimation while the child was under the age of 21 years. The Act of November 14, 1986, Pub. L. No. 99-653, 100 Stat. 3655, amended the "old" section 309(a) of the Act, applying the changed provisions to individuals who were not yet 18 years of age on November 14, 1986, and whose paternity had not been established by legitimation before that date.[2] The amended section 309(a) ("new" section 309(a)) states in relevant part that:

> The provisions . . . of section 301 [of the Act] . . . shall apply as of the date of birth to a person born out of wedlock if-
>
> (1) a blood relationship between the person and the father is established by clear and convincing evidence,
>
> (2) the father had the nationality of the United States at the time of the person's birth,
>
> (3) the father (unless deceased) has agreed in writing to provide financial support for the person until the person reaches the age of 18 years, and
>
> (4) while the person is under the age of 18 years-
>
> (A) the person is legitimated under the law of the person's residence or domicile,
>
> (B) the father acknowledges paternity of the person in writing under oath, or
>
> (C) the paternity of the person is established by adjudication of a competent court.

[2] *See* section 9(r) of The Immigration Technical Corrections Act of 1988, Pub. L. No. 100-525, 102 Stat. 2609 (adding a new section 23(e) to the Act of November 1986, which provides, in relevant part, that the "old" section 309(a) shall apply to an individual with respect to whom paternity was established by legitimation before November 14, 1986).

Thus, unless the Applicant can demonstrate that her paternity was established by legitimation before November 14, 1984, she must show that she satisfied all relevant conditions in the "new" section 309(a) to acquire U.S. citizenship at birth from her father as his out-of-wedlock child.

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

II. ANALYSIS

The only contested issue on appeal is whether the Applicant has shown that her paternity was established by legitimation under the "old" section 309(a) of the Act before November 14, 1986.

We have reviewed the entire record and agree with the Director that the Applicant has not shown she was legitimated under the law of [redacted] Mexico, where she was born and resided prior to November 14, 1986. Nevertheless, because the Director did not consider the Applicant's alternative claim that she met the conditions in the "new" section 309(a) of the Act, we will return the matter for the Director to evaluate this claim in the first instance, and to enter a new decision.

A. Jurisdiction

As an initial matter, the record reflects that the Applicant was residing in Mexico when she filed the instant Form N-600, and the record on appeal indicates that she continues to reside there. As a result, jurisdiction to adjudicate her U.S. citizenship claim is currently with the U.S. Department of State.[3] Although USCIS may accept a Form N-600 filed by an individual who resides outside of the United States, it may issue a Certificate of Citizenship only "[u]pon proof to the satisfaction of the [Secretary of Homeland Security] that the applicant is a citizen . . . and upon taking and subscribing before a member of the Service within the United States to the oath of allegiance required . . . *only if such individual is at the time within the United States*." Section 341(a) of the Act, 8 U.S.C. §1452(a) (emphasis added). Consequently, while USCIS may conduct a preliminary review of a Form N-600 and supporting evidence submitted by an applicant residing overseas, it has no authority to complete adjudication of the Form N-600 and issue a Certificate of Citizenship unless (1) the applicant meets their burden of proof to establish the claimed U.S. citizenship, and (2) is present in the United States to take the oath of allegiance.

B. The Older Sibling's Citizenship

Secondly, in considering the Applicant's citizenship claim we are limited to the record of proceedings before us. *See* 8 C.F.R. § 103.2(b)(16)(ii) (providing that a determination on an applicant's statutory eligibility for the requested benefit shall be based on the information contained in that applicant's

[3] *See* section 104(a) of the Act, 8 U.S.C. § 1104(a) (stating, in pertinent part, that the "Secretary of State shall be charged with the administration and the enforcement of the provisions of this Act and all other immigration and nationality laws relating to . . . (3) the determination of nationality of a person not in the United States"); *see also* 22 C.F.R. § 50.2 (providing that the U.S. Department of State "[s]hall determine claims to United States nationality, when made by persons abroad on the basis of an application for registration, for a passport, or for a Consular Report of Birth Abroad of a Citizen of the United States of America. . . .").

record of proceedings). Accordingly, while we acknowledge the Applicant's statement that her older brother was issued a Certificate of Citizenship, the record before us does not include evidence in support of the brother's citizenship claim, aside from a 2015 statement from the mother concerning her relationship with the Applicant's father and the father's physical presence in the United States. Furthermore, given the nine-year age difference between the Applicant and her brother and the lack of specific evidence concerning the circumstances of his birth, we are not bound by a favorable adjudication of the brother's citizenship claim in separate proceedings,[4] as we are not required to approve applications where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See e.g.*, *Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 597 (Comm'r 1988). Consequently, the Applicant's unsupported claim that USCIS issued a Certificate of Citizenship to her older brother based on the same evidence is inadequate to establish that she acquired U.S. citizenship at birth from her father.

C. Legitimation under "Old" Section 309(a) Not Established

Legitimation means "placing a child born out of wedlock in the same legal position as a child born in wedlock." *Matter of Moraga*, 23 I&N Dec. 195, 197 (BIA 2001).

The Applicant's birth certificate shows that her birth was registered in [redacted] Mexico, and includes the names of both her parents in the "registered person's filiation data" section. The Director determined that the birth certificate was not sufficient to establish that the Applicant was legitimated by her father under [redacted] law, because the provisions of the [redacted] Civil Code indicated that the children born out of wedlock may be considered to be born in wedlock only if the parents subsequently marry and expressly acknowledge the children as theirs, either jointly or separately.

The Applicant asserts, referencing a 2012 advisory opinion from the Law Library of Congress (LOC opinion),[5] that this determination was in error. Specifically, she states that the Director did not consider the chapter in the [redacted] Civil Code providing for filiation of a child born out of wedlock by entry in the civil register. The Applicant reiterates that the acknowledgment of paternity by her father gave her all of the same legal rights as those of children who were born in wedlock, and that she was therefore legitimated by her father prior to November 14, 1986, under the "old" section 309(a) of the Act. We are not persuaded.

While the "old" section 309(a) of the Act conflates concepts of "paternity" and "legitimation," those terms have different meanings. "Paternity" pertains to the identity of the person's father, and is "a biological fact." *See e.g.*, *Lau v. Kiley*, 563 F.2d 543, 550 (2d Cir.1977). "Legitimation," in turn, is a legal concept, as each country or state has "the power to define what constitutes [legitimacy or illegitimacy], to regulate it, or even to abolish any distinctions founded upon it." *Id.* at 549. Thus, a person born out of wedlock in a state or country that distinguishes between children based on the marital status of their parents is not necessarily "legitimate" or "legitimated" even if their paternity is established.

[4] We note that the Applicant has not provided evidence that her brother was issued a Certificate of Citizenship, as she claims.

[5] Report for the Executive Office for Immigration Review, *Mexico: Legitimation and Rights of Acknowledged Children Born out of Wedlock in the State of Chihuahua, 1993-1998 (and Currently)*, LL File No. 2012-008081 (June 2012).

According to the LOC opinion, pursuant to the [redacted] Civil Code's legitimation provisions, as in effect since 1974, a child born out of wedlock in that state is considered to be born in wedlock if the parents marry and acknowledge the child as their own either jointly or separately before or after the marriage. Legitimation is effective from the day on which the parents marry, even if acknowledgement takes place afterwards. The LOC opinion indicates that, separate from *legitimation*, *filiation* (or parentage) of an out-of-wedlock child may be established, with respect to the mother, by the mere fact of birth. Filiation with respect to the father may only be established by a judgement that declares paternity or voluntary acknowledgment, including in the birth certificate before a civil registry official. Upon such acknowledgement, the child gains certain rights, including the right to: take the last name of the acknowledging parent(s); get support from the acknowledging parent(s); and get an inheritance share and support as provided by law.

Although the Applicant claims that the rights of out-of-wedlock children acknowledged by their fathers in accordance with [redacted] law are the same as those of children born to married parents, she does not submit evidence to corroborate this claim. *See Matter of Annang*, 14 I&N Dec. 502, 503 (BIA 1973) (providing that the law of a foreign country is a question of fact which must be proved by an applicant if they are relying on that law to establish eligibility for the requested immigration benefit). Rather, the separate provisions concerning legitimation and filiation in the [redacted] Civil Code indicate that the two terms are not interchangeable, and that the legal consequences of filiation and legitimation under [redacted] law are not selfsame. Consequently, even if the Applicant's filiation with respect to her father was established in accordance with the laws of [redacted] the evidence remains insufficient to demonstrate that the filiation alone had the legal effect of legitimating the Applicant under [redacted] law without the parents' marriage.

We note, however, that the Applicant's initial statements in support of the instant Form N-600 included a claim that she met the requirements of the "new" section 309(a) of the Act. Because the Director did not evaluate whether the Applicant satisfied those requirements, we will return the matter for the Director to determine in the first instance whether the Applicant meets the conditions in the "new" section 309(a) of the Act, and to enter a new decision concerning her citizenship claim. The Director may request any additional information and documents deemed necessary to make this determination. If the Director concludes that the preponderance of the evidence is inadequate to establish that the Applicant acquired U.S. citizenship at birth from her father under section 301(g) of the Act, the Director shall explain the specific reasons for this conclusion in the new decision. Conversely, if the Director determines that the Applicant appears eligible for issuance of a Certificate of Citizenship, the Director shall communicate with the Applicant to schedule an in-person interview before a USCIS officer. If the Applicant elects to come to the United States for the interview, the Director shall complete adjudication of the Applicant's U.S. citizenship claim on the merits while the Applicant is in the United States. If the Applicant declines the opportunity for an interview in the United States, she must pursue her U.S. citizenship claim before the U.S. Department of State.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.