U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28718548

Date: OCT. 27, 2023

Appeal of Houston, Texas Field Office Decision

Form N-600, Application for Certificate of Citizenship

The Applicant seeks a Certificate of Citizenship[1] to reflect that she acquired U.S. citizenship at birth from her father under former section 301(a)(7) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(a)(7).[2]

The Director of the Houston, Texas Field Office denied the Form N-600, concluding that the Applicant did not establish that her father met the overall 10-year prior physical presence in the United States requirement for transmission of citizenship under that section of the Act.

On appeal, the Applicant resubmits previously provided evidence and reasserts eligibility for a Certificate of Citizenship.

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.

I. LAW

The record reflects that the Applicant was born in Mexico in [redacted] 1953 to married parents. Her father was born in Mexico in [redacted] 1911, but acquired U.S. citizenship at birth from his parents, both of whom were born in Texas. The Applicant's mother, her father's second spouse, was a Mexican citizen.

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] We note that the Applicant naturalized as a U.S. citizen in 2013, and the record contains a copy of her Certificate of Naturalization.

[2] Redesignated as section 301(g) of the Act by section 3 of the Act of October 10, 1978, Pub. L. No. 95-432, 92 Stat. 1046.

Former section 301(a)(7) of the Act, which was in effect at the time of the Applicant's birth,[3] provided in relevant part that a person born abroad to one U.S. citizen and one noncitizen parent would be a national and citizen of the United States if the 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."

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. *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.

II. ANALYSIS

The record contains a copy of the father's 1959 Certificate of Citizenship, and there is no dispute that he was a U.S. citizen at the time of the Applicant's birth abroad in 1953. The only issue on appeal is whether the Applicant has met her burden of proof to show that her father was physically present in the United States for 10 years before her birth, and that at least five of those years were after the father's 14th birthday in 1925. We have reviewed the entire record and conclude that she has not met this burden.

The Applicant indicated on the instant Form N-600 that her father was in the United States from July 1928[4] until approximately 1949, and from 1959 until his death in Mexico in 1990. The previously submitted supporting evidence includes copies of the Forms N-600, Applications for Certificate of Citizenship her father and her paternal half-sister filed in 1959 and 1968, respectively, as well as their Certificates of Citizenship. The Applicant also provided a sworn statement indicating that her father worked on a ranch in Texas "between the years of 1959 and 1969" and a copy of what she identified as her father's 1946 border crossing record obtained from a genealogy website.[5] The record also includes a 1920 U.S. census record the Applicant submitted to show that her great-grandfather and grandparents resided in Texas at the time, and another printout from the genealogy website which indicates that a social security number was issued to her father in 1964.

The Director determined that although this evidence pointed to the father's residence in the United States *after* the Applicant's birth in 1953, it was not sufficient to establish that he met the U.S. physical presence requirements for transmission of citizenship *before* she was born. The Director acknowledged that the Applicant's relatives resided in the United States in the 1920s and that her half-sister was issued a Certificate of Citizenship, but explained that this evidence was not relevant to the Applicant's own citizenship claim, because the half-sister was born in 1940, when a different citizenship statute was in effect, and the census record was not probative of her father's presence in the United States because it did not include his name.

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[3] The Director's decision references the provisions of section 301(g) of the Act; however, former section 301(a)(7) of the Act was in effect when the Applicant was born. The error does not affect our adjudication on appeal, because the physical presence requirements under former sections 301(a)(7) and 301(g) of the Act were the same and did not change until former section 301(g) was amended in 1986.

[4] This appears to be typographical error, as the Applicant claims her father came to the United States in July 1924.

[5] The copy is illegible.

The Applicant asserts that the Director's decision was in error because her father represented in his own citizenship proceedings that he arrived in the United States before July 1924, and was only absent from the country from 1949 until 1959. She further states that her paternal half-sister indicated on her Form N-600 that the father was residing in the United States from 1912 to 1928 and again from 1929. The Applicant claims that this is adequate to show that her father was present in the United States for 10 years before her birth and that five of those years were after his 14th birthday, as mandated by former section 301(a)(7) of the Act.[6]

We have reviewed the entire record and conclude that it remains inadequate to establish that the Applicant acquired U.S. citizenship at birth from her father. Neither the father's nor the half-sister's representations concerning the father's prior *residence* in the United States are sufficient to establish that the father satisfied the prior 10-year U.S. *physical presence* requirement to transmit his citizenship to the Applicant under former section 301(a)(7) of the Act.

As an initial matter, the terms *residence* and *physical presence* have different meanings in the context of citizenship proceedings and are not interchangeable. Physical presence refers to the actual time a person is in the United States, regardless of whether they have a residence in the United States. *See generally* 12 *USCIS Policy Manual* H.2(E)(1), https://www.uscis.gov/policy-manual (discussing the differences between the two terms and providing examples of evidence that may establish a person's physical presence in the United States). The meaning of "residence" for purposes of conferring U.S. citizenship has evolved over the years. For example, to establish acquisition of citizenship at birth, individuals who like the Applicant's father were born abroad of two U.S. citizen parents prior to May 24, 1934, had to show only that either parent "resided" in the United States, where the word "resided" meant any temporary physical presence in the United States. *See* section 1 of the Act of February 10, 1855, 10 Stat. 604, as incorporated into section 1993 of the Revised Statutes of the United States (the Revised Statutes); *Matter of V-*, 6 I&N Dec. 1 (A.G. 1954) (holding that two visits to the United States by a U.S. citizen parent prior to the birth of her children, one for two days and the other for a few hours, were sufficient to satisfy the residence requirement under section 1993 of the Revised Statutes). Section 1993 of the Revised Statutes, as amended by the Act of May 24, 1934, Pub. L. No. 73-250, 48 Stat. 797,[7] was in effect in 1940 when the Applicant's half-sister was born. The amended statute required the same broadly interpreted prior residence of a U.S. citizen parent for a child to acquire U.S. citizenship at birth, but imposed an additional citizenship retention requirement on the child.

Because the citizenship claims of the Applicant's father and half-sister were adjudicated pursuant to prior statutes which did not require evaluation of the U.S. citizen parent's specific periods of prior physical presence in the United States, we cannot give their general statements concerning the father's residence in the United States significant weight in these proceedings. We further note that those statements are not only inconsistent with each other, but they also do not comport with other evidence in the record. Specifically, while the father indicated on his Form N-600 that he came to the United States prior to July 1924 and did not leave until 1949, his 1946 border crossing record (as described by the Applicant) indicates that he did in fact travel outside the United States during this period.

[6] The Applicant also attests to her own physical presence in the United States within 1959-1969 and 1974-1977 timeframes, but does not explain the relevance of her presence in the country after birth to her citizenship claim.

[7] Repealed by the 1940 Nationality Act, Pub. L. 76-853, 54 Stat. 1137, which took effect on January 13, 1941.

Furthermore, the Applicant's half-sister claimed on her Form N-600 that their father only resided in the United States in 1912 and for a one-year period from 1928 to 1929, which is not consistent with the father's claims. The Applicant must resolve inconsistencies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N. Dec. 582, 591-92 (BIA 1988). Here, the Applicant has not provided such evidence. Moreover, even if she had established when and how long her father *resided* in the United States prior to 1953 (which she did not for the reasons stated above) she has not submitted sufficient documentation, such as her father's residential, employment, social security, census, or similar records, to show when and how long he was *actually physically present* in the United States during the specific periods of his residence in the country.

In view of the above, we conclude that the Applicant has not met her burden of proof to demonstrate that her father satisfied the prior U.S. physical presence requirements to transmit his U.S. citizenship to her at birth pursuant to the provisions of former section 301(a)(7) 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.