U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28282555

Date: OCT. 30, 2023

Appeal of Santa Ana, California Field Office Decision

Form N-600, Application for Certificate of Citizenship

The Applicant seeks a Certificate of Citizenship to reflect that he acquired U.S. citizenship at birth under section 341 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1452(a).

The Director of the Santa Ana, California Field Office denied the Form N-600, Application for Certificate of Citizenship (Form N-600), concluding that the record did not establish that the Applicant acquired citizenship at birth and is eligible for a Certificate of Citizenship under section 341 of the Act. The matter is now before us on appeal. 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.

The record reflects that the Applicant was born in Mexico on [redacted] 1982. The Applicant's mother was not a U.S. citizen at the time of his birth. Though the Applicant's paternal grandmother was born in California and is a U.S. citizen by birth, the Applicant has not established that his father derived U.S. citizenship through his mother or that his father otherwise became a U.S. citizen. Thus, as presently constituted, the record supports that the Applicant's claim to U.S. citizenship should be evaluated under section 341 of the Act as the child of unmarried foreign national parents.

The Applicant's parents were married in Mexico in [redacted] 2002, after the Applicant's 18th birthday but before his 21st birthday, and they divorced in California in [redacted] 2012. The Applicant's mother became a naturalized U.S. citizen in November 1999. Although the Applicant is residing in the United States, there is no evidence that he has ever been admitted to the United States as a lawful permanent resident or in any other status.

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 the Applicant's claim is "probably true," based on the specific

facts of his case. *See Matter of Chawathe*, at 376 (citing *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989)).

The Director denied the Form N-600 concluding that the record did not establish that the Applicant acquired U.S. citizenship from his father at birth and is eligible for a Certificate of Citizenship under section 341 of the Act. Specifically, the Director noted that the Applicant's father was born in Mexico, but the Applicant did not provide any information regarding his father's nationality or U.S. citizenship status. The Director acknowledged evidence that the Applicant's paternal grandmother was born in California and is a U.S. citizen by birth. Based on this information provided by the Applicant, the Director indicated that it appeared the Applicant was claiming to have acquired U.S. citizenship through his father, on the reliance of his paternal grandmother's physical presence in the United States. However, the Director concluded that the Applicant did not provide sufficient evidence and information to establish that he acquired U.S. citizenship at birth, including identifying the section of law through which he claimed to have acquired U.S. citizenship. Additionally, the Director determined, and we agree, that the Applicant did not derive U.S. citizenship through his naturalized U.S. citizen mother because he has not been admitted for lawful permanent residence, as discussed below.

On appeal, the Applicant asserts that he is eligible to receive a Certificate of Citizenship because he has shown that physical presence requirements have been met via his U.S. citizen paternal grandmother. It is noted that the Applicant has not indicated the section of law through which he claims to have acquired U.S. citizenship, and his assertions are unclear. The Applicant indicates that the requirement is for one of his parents to be a U.S. citizen and it allows him to rely on a U.S. citizen grandparent's physical presence in the United States to establish eligibility. He contends that his U.S. citizen paternal grandmother resided in the United States through the age of 16, until she married his grandfather in Mexico in [redacted]1952, thus meeting the physical presence requirements. The Applicant submits, on appeal, evidence of his mother's naturalization, his relationship to his father, and his father's relationship to his own mother (the Applicant's paternal grandmother), a U.S. citizen by birth, along with evidence of his grandmother's marriage in Mexico and her current diagnosis of Alzheimer's Disease to explain that the lack of evidence regarding her physical presence in the United States is due to her inability to remember details of her childhood.

Upon review, we first note that the record does not support that the Applicant derived U.S. citizenship through the naturalization of his U.S. citizen mother because he has not been admitted for lawful permanent residence. The applicable law for derivative citizenship purposes is "the law in effect at the time the critical events giving rise to eligibility occurred." *See Minasyan v. Gonzales,* 401 F.3d 1069, 1075 (9th Cir. 2005). In this case, the Applicant was born in 1982, and he turned 18 in 2000, when former section 321 of the Act was in effect. Generally, former section 321 of the Act (as in effect at the time of the Applicant's birth in 1982) provides that a child born outside of the United States to noncitizen parents becomes a citizen of the United States upon fulfillment of (1) the naturalization of both parents, or (2) the naturalization of the surviving parent if one of the parents is deceased, or (3) the naturalization of the parent having legal custody of the child when there has been a legal separation of the parents or the naturalization of the mother if the child was born out of wedlock and the paternity of the child has not been established by legitimation, and if (4) such naturalization takes place while the child is under the age of 18 years, and (5) the child is residing in the United States pursuant to a lawful admission for permanent residence at the time of the naturalization of the parent, or thereafter

begins to reside permanently in the United States while under the age of 18 years. A person is admitted to the United States for permanent residence when the person adjusts status in the United States to that of a lawful permanent resident, or when the person is inspected and admitted to the United States with an immigrant visa at a port of entry. *See generally* 7 *USCIS Policy Manual* A.1(A), https://www.uscis.gov/policy-manual. As the Applicant has not shown that he has been admitted for permanent residence, he has not shown that he meets the requirements of section 321 of the Act.

The Applicant's contention that he acquired U.S. citizenship based on one of his parents being a U.S. citizen and relying on his U.S. citizen paternal grandmother's physical presence is not supported. The regulation at 8 C.F.R. § 322.2(a)(2) potentially allows for relying on a U.S. citizen grandparent's physical presence in the United States for eligibility when the U.S. citizen parent does not meet the requirements. However, this regulation relates to obtaining citizenship under section 322 of the Act, which became effective on February 27, 2001, after the Applicant reached 18 years of age.[1] Section 322 of the Act was not retroactive, and acquisition of citizenship under that provision could only occur on or after February 27, 2001 and only for children who were under age 18 as of that date. As the Applicant had reached 18 years of age as of February 27, 2001, the regulation at 8 C.F.R. § 322.2(a)(2) does not apply to his circumstances. The Applicant has not cited any other provision of law that allows for meeting physical presence requirements through a grandparent.[2]

The Applicant has not provided any evidence of his father's nationality or U.S. citizenship status. Additionally, a thorough search of U.S. Citizenship and Immigration Services and former Immigration and Naturalization Service records did not show a record of the Applicant's father's naturalization, derivation, or acquisition of U.S. citizenship. Thus, the record does not support that the Applicant obtained citizenship based on his father's citizenship.[3]

In sum, the preponderance of the evidence in the record is insufficient to establish that the Applicant was born to U.S. citizen parents, or that he acquired citizenship through his mother's naturalization. As such, he is ineligible for a Certificate of Citizenship and his Form N-600 remains denied.

ORDER: The appeal is dismissed.

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[1] As of February 27, 2001, the Applicant had reached [redacted] of age.

[2] It is noted that, under 8 C.F.R. § 322.2(a)(2), the U.S. citizen grandparent must be the mother or father of the U.S. citizen parent from whom the Applicant is acquiring citizenship. However, even if section 322 of the Act applied to these facts, the applicant has not shown that his father is a U.S. citizen, as would be required under 8 C.F.R. § 322.2(a)(2) in order to rely on his paternal grandmother's physical presence in the United States.

[3] Even if section 322 of the Act applied to these facts, and the Applicant had established that his father is a U.S. citizen as required by 8 C.F.R. § 322.2(a)(2), he has not demonstrated, by a preponderance of the evidence, that his U.S. citizen grandmother met the physical presence requirements of not less than five years, at least two of which were after reaching the age of 14. The Applicant argues on appeal that his grandmother resided in the United States through the age of 16 when she married his grandfather in Mexico. However, the record indicates that she was born in [redacted] 1937 and married in Mexico in [redacted] 1952, which made her 15 years and 10 months old, or two months shy of her 16th birthday. This evidence alone is not sufficient to demonstrate that she resided in the United States for at least two years after reaching the age of 14.