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U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF I-W-G-

DATE: JAN. 29, 2016

APPEAL OF NEW YORK DISTRICT OFFICE DECISION

APPLICATION: FORM N-600, APPLICATION FOR CERTIFICATE OF CITIZENSHIP

The Applicant, a native and citizen of Ukraine seeks a Certificate of Citizenship. *See* Immigration and Nationality Act (the Act) §§ 301 and 309, 8 U.S.C. §§ 1401 and 1409. The District Director, New York, New York, denied the application. The matter is now before us on appeal. The appeal will be dismissed.

The record reflects that the Applicant was born out of wedlock in Ukraine on The Applicant, whose mother is not a U.S. citizen, claims that his father is a U.S. citizen. The Applicant's mother married his claimed U.S. citizen father on 2009, when the Applicant was years old. The Applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship through his claimed U.S. citizen father.

In a decision dated March 10, 2015, the Director determined that the record does not contain clear and convincing evidence to establish that there is a blood relationship between the Applicant and his claimed U.S. citizen father. The Director denied the Form N-600, Application for Certificate of Citizenship, accordingly.

On appeal, the Applicant's claimed father submits a statement. The Applicant also resubmits a copy of a 2009 extract of the Applicant's original birth certificate, registered on which lists the name of the Applicant's father as being different from the name of his currently claimed father, and a copy of a June 15, 2013, extract of the Applicant's birth certificate, which does list the name of his currently claimed father as his father. The Applicant therefore contends that he has met the requirements of § 309(a) of the Act to establish that he acquired U.S. citizenship through his claimed U.S. citizen father.

We conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

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

specific facts of each case. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (citing *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989)).

Section 301(g) of the Act provides, in pertinent part, that the following shall be citizens of the United States at birth:

> [A] person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, 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 five years, at least two of which were after attaining the age of fourteen years . . . .

The record shows that the Applicant's claimed father was born a U.S. citizen on in the State of Delaware. The Applicant indicated on his Form N-600 that his claimed father established the physical presence requirement prescribed under § 301(g) of the Act.

The Applicant was born out of wedlock on in Ukraine. Therefore, in order to acquire U.S. citizenship through his claimed father, the Applicant must also meet the requirements set forth in section 309(a) of the Act.

Section 309(a) of the Act states, in relevant part:

> (a) The provisions of paragraphs (c), (d), (e), and (g) of section 301 . . . 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.

We note that the requirements of section 309(a)(2) and 309(a)(3) of the Act have been met. Specifically, the record reflects that the Applicant's claimed father had the nationality of the United States at the time of the Applicant's birth, as he was born a U.S. citizen, and the claimed father has submitted a January 6, 2015, statement as evidence of his agreement to provide financial support to the Applicant until he turns 18 years of age.

As noted above, a person claiming to have acquired U.S. citizenship has the burden of establishing his claim to U.S. citizenship by a preponderance of the evidence, requiring that the record

demonstrate that the claim is "probably true." Through the enactment of section 309(a)(1) of the Act, for a person born out of wedlock to a U.S. citizen father, Congress raised the standard of proof in requiring that the blood relationship between the person and the father must be established by clear and convincing evidence. The clear and convincing standard of proof requires more than the preponderance of the evidence standard but less than the beyond a reasonable doubt standard. It is a degree of proof which will produce a firm belief or conviction. *See Matter of Patel*, 19 I&N Dec. 774 (BIA 1988).

In this particular case, the Applicant was born on [redacted] His birth certificate was registered on [redacted] and the name of the father included on the original birth certificate, issued June 11, 2009, is not the name of his claimed U.S. citizen father. The Applicant asserts that the name of the father on his original birth certificate is actually the name of the father of his mother. The Applicant contends that because he was born out of wedlock, the law in Ukraine required that he hold the family name of his mother, and therefore the name of his mother's father was entered on the birth certificate as his being father. In support of this contention, the Applicant submitted a copy of the birth certificate of his mother, showing that the name of his father on his birth certificate is the same name as the father listed on his mother's birth certificate, and the death certificate of his mother's father, indicating that he died on [redacted] 1996, eight years prior to the Applicant's birth. The Applicant provided no evidence of the law of Ukraine which states that his mother was required to enter the name of her father as the Applicant's father on the Applicant's birth certificate. Moreover, the assertion that the Applicant's birth certificate incorrectly lists his grandfather as his father does not establish by clear and convincing evidence that his claimed U.S. citizen father is actually his father.

The record indicates that the Applicant's claimed U.S. citizen father married his mother on [redacted] 2009, in Ukraine. On August 10, 2009, the Applicant's claimed U.S. citizen father filed a Form I-130, Petition for Alien Relative, on behalf of the Applicant, which was approved on September 30, 2009. (A notation on the Form I-130 by the U.S. Citizenship and Immigration Services Officer (USCIS) indicates that the Form I-130 was approved under visa classification CR2, step-child of a U.S. citizen). On September 3, 2009, the Applicant's claimed U.S. citizen father filed a Form I-129F, Petition for Alien Fiancé(e), on behalf of the Applicant's mother, which listed the Applicant as the beneficiary's child, and was approved on September 30, 2009. The Applicant's visa application was processed at the U.S. Embassy in Kiev, Ukraine, on November 12, 2009, as a K-4 visa applicant, child of K-3 nonimmigrant visa applicant who is the spouse of a U.S. citizen and the beneficiary of an approved Form I-130 awaiting adjudication. The Applicant was admitted to the United States on November 25, 2009. On March 2, 2011, the Applicant filed a Form I-485, Application to Register Permanent Residence or Adjust Status, which was approved on May 3, 2011, under visa classification CR7, step-child of a U.S. citizen.

The record further includes a copy of a school document for the Applicant from the [redacted] dated January 29, 2010, which list the Applicant's claimed U.S. citizen father as his step-father.

Based on the evidence described above, the Applicant has not demonstrated a blood relationship exists between himself and his claimed U.S. citizen father by clear and convincing evidence.

The Applicant's claimed father asserts that he was advised by USCIS officials that he had to use the Applicant's original birth certificate, which the claimed father calls an estoppel document, on USCIS petitions and to facilitate the Applicant's travel, as it was the first issued document of birth. The Applicant's claimed father additionally contends that, throughout the immigration process, he has been misinformed and advised incorrectly, to the Applicant's detriment, by USCIS officials. While we are not unsympathetic, we note that the Applicant's claimed father is responsible for procuring correct advice.

The record includes a copy of a June 15, 2013, extract of the Applicant's birth certificate, which does list the name of his currently claimed father as his father. The record is not clear as to when the birth record of the Applicant was amended to indicate that his claimed U.S. citizen father was his actual father, as the record also contains an earlier issued birth certificate with a different individual listed as the father. Thus, the evidence indicates that the Applicant's birth record was not amended until 8 years after his birth, and thus the 2013 extract is considered to be a delayed birth certificate. The same evidentiary weight does not attach to a delayed birth certificate as would attach to one contemporaneous with the actual event. *See Matter of Lugo-Guadiana*, 12 I&N Dec. 726, 729 (BIA 1968). A delayed certificate must be evaluated in light of other evidence in the record and in light of the circumstances of the case. *See Matter of Bueno-Almonte*, 21 I&N Dec. 1029, 1033 (BIA 1997). A delayed birth certificate, even where unrebutted by contradictory evidence, will not in every case establish an applicant's status as United States citizen. When United States citizenship is sought to be established through a delayed birth certificate each case must be decided on its own facts with regard to the sufficiency of the evidence presented as to an applicant's birthplace. *See Matter of Serna*, 16 I&N Dec. 643 (BIA 1978).

In prior cases, we have been reluctant to accord delayed birth certificates the same weight we would give birth certificates issued at the time of birth due to the potential for fraud. *See, e.g., Matter of Ma*, 20 I&N Dec. 394 (BIA 1991). In *Matter of Serna*, 16 I&N Dec. 643 (BIA 1978), a case involving the establishment of United States citizenship through the presentation of a delayed United States birth certificate, we explained this approach. We acknowledged that a delayed birth certificate might be the only type of birth certificate available to some applicants and noted that it would be unjust to penalize these persons; however, we recognized that "there can be little dispute that the opportunity for fraud is much greater with a delayed birth certificate." *Matter of Serna*, *supra*, at 645. Given these competing concerns, we ruled that a delayed birth certificate, even when unrebutted by contradictory evidence, will not in every case establish status as a United States citizen. Each case must be decided on its own facts with regard to the sufficiency of the evidence presented. *Id.*

In a statement dated June 3, 2014, the Applicant's claimed U.S. citizen father states that he believed he could not register the Applicant as a U.S. citizen at the U.S. Consulate in Ukraine at the time of his birth as he was not married to the Applicant's mother. He further states that he was later

misinformed regarding the need for him to file the Form I-129F on behalf of his wife and her child, and that he received incorrect advice regarding processing the Applicant's visa as a step-son as opposed to his son. The Director issued two RFE Forms N-14, Requests for Evidence, on December 2, 2014, and January 30, 2015, advising the Applicant that the record did not establish a child/father relationship based on clear and convincing evidence, and suggested that the Applicant and his claimed U.S. citizen father submit the results of blood tests in order to meet the clear and convincing standard of proof. While the Applicant's father responded that such testing is not required to confer citizenship, the evidence that is currently on the record does not establish the child/father blood relationship by clear and convincing evidence.

Accordingly, the Applicant has not established, by clear and convincing evidence, that there is a blood relationship between himself and a U.S. citizen father. He therefore does not meet the requirements set forth in section 309(a)(1) of the Act.

We further find that the record does not reflect that the Applicant has satisfied the requirements in section 320(a)(4) of the Act. Specifically, the Applicant has not demonstrated that he has been legitimated under the law of his residence, that the claimed father has acknowledged the Applicant's paternity in writing under oath, or that the Applicant's paternity has been established by adjudication of a competent court.

In addition, we concur with the Director that the Applicant does not meet the requirements of section 320 of the Act.

Section 320(a) of the Act, 8 U.S.C. § 1431(a), provides:

> A child born outside of the United States automatically becomes a citizen of the United States when all of the following conditions have been fulfilled:
>
> (1) At least one parent of the child is a citizen of the United States, whether by birth or naturalization.
>
> (2) The child is under the age of eighteen years.
>
> (3) The child is residing in the United States in the legal and physical custody of the citizen parent pursuant to a lawful admission for permanent residence.

In order to be eligible to acquire U.S. citizenship under section 320 of the Act, it is further necessary to meet the definition of a child for purposes of Title III of the Act, as defined under section 101(c) of the Act:

> ...an unmarried person under twenty-one years of age and includes a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in the United Sates or elsewhere, and except as otherwise provided in

> section 320 and 321 of the title III, a child adopted in the United States, if such legitimation or adoption takes place before the child reaches the age of 16 years . . . and the child is in the legal custody of the legitimating or adopting parent or parents at the time of such legitimation or adoption.

In contrast to Section 101(b) of the Act, the definition of "child" for Title III purposes does not include a "step-child." *Matter of Guzman-Gomez*, 24 I&N Dec. 824 (BIA 2009).

As noted above, while the Applicant has established through the record that he qualifies to be a step-child of his U.S. citizen father, he has not established that he is a natural or adopted child in accordance with section 101(c) of the Act in order to acquire U.S. citizenship under section 320 of the Act.

It is the Applicant's burden to establish the claimed citizenship by a preponderance of the evidence. Section 341(a) of the Act, 8 U.S.C. § 1452(a); 8 C.F.R. § 341.2(c). In order to acquire U.S. citizenship through § 309(a) of the Act, it is the Applicant's burden to establish a blood relationship between himself and his father by clear and convincing evidence. Section 309(a)(1) of the Act. Furthermore, as indicated above, the Applicant must meet his burden of proof regarding the requirements of section 320(a)(4) of the Act. Here, that burden has been not met.

ORDER: The appeal is dismissed.

Cite as *Matter of I-W-G-*, ID# 15209 (AAO Jan. 29, 2016)