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U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF I-C-E-

DATE: MAR. 24, 2016

APPEAL OF IMPERIAL, CALIFORNIA FIELD SUPPORT OFFICE DECISION

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

The Applicant, a native and citizen of Mexico, seeks a Certificate of Citizenship. *See* Immigration and Nationality Act (the Act) § 309(c), 8 U.S.C. § 1409(c). The Director, Imperial, California Field Support Office, denied the application. The matter is now before us on appeal. The appeal will be dismissed.

The record reflects that the Applicant was born in Mexico on [redacted] to a U.S. citizen mother and a Mexican citizen father. The Applicant's parents subsequently married on [redacted] 1961, in California. The Applicant seeks a Certificate of Citizenship indicating that he acquired U.S. citizenship at birth through his mother pursuant to section 309(c) of the Act.

On June 17, 2015, the Director denied the Applicant's Form N-600, Application for a Certificate of Citizenship, finding that the Applicant did not acquire U.S. citizenship under section 309(c) of the Act, because he did not establish that his mother was physically present in the United States or one of its outlying possessions for a continuous period of 1 year. Specifically, the Director determined that a statement given to a government official by the Applicant's maternal grandmother, [redacted] regarding her presence in the United States after the Applicant's mother was born, was inconclusive in light of the fact that a different name for the Applicant's maternal grandmother, [redacted] was listed on his mother's birth certificate.

On appeal, the Applicant asserts that the Director's decision was in error as his mother's birth record alone is sufficient to establish that she was physically present in the United States for 1 year prior to the Applicant's birth. Moreover, the Applicant states that the Director improperly disregarded the sworn statement given by the Applicant's grandmother. The Applicant explains that [redacted] is his great-grandmother, and that her name was erroneously listed on his mother's birth certificate due to possible linguistic differences between the Applicant's Spanish-speaking ancestors and the English-proficient registrar in Arizona, where the birth was registered.

The evidence of the record includes, but is not limited to: birth, marriage, and death certificates; and printouts and copies of immigration documents of the Applicant's grandparents obtained from a genealogy resources website.

We review these proceedings *de novo*. 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. *See Chau v. Immigration and Naturalization Service,* 247 F.3d 1026, 1028 n.3 (9th Cir. 2001) (internal citation omitted). The Applicant was born on [redacted] to an unwed U.S. citizen mother. Accordingly, section 309(c) of the Act controls the Applicant's citizenship claim.

Section 309(c) of the Act states, in pertinent part:

> [A] person born, after December 23, 1952, outside the United States and out of wedlock shall be held to have acquired at birth the nationality status of his mother, if the mother had the nationality of the United States at the time of such person's birth, and if the mother had previously been physically present in the United States or one of its outlying possessions for a continuous period of one year.

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 evidence demonstrate that the Applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989).

In evaluating the evidence, *Matter of E-M-* also stated that "[t]ruth is to be determined not by the quantity of evidence alone but by its quality." *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, U.S. Citizenship and Immigration Services (USCIS) must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true. Even if USCIS has some doubt as to the truth, if the Applicant submits relevant, probative, and credible evidence that leads the agency to believe that the claim is "probably true" or "more likely than not," the Applicant has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (defining "more likely than not" as a greater than 50 percent probability of something occurring). If USCIS can articulate a material doubt that leads it to believe that the claim is probably not true, then USCIS may deny the application. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

To establish acquisition of citizenship pursuant to section 309(c) of the Act, the Applicant must show he was born out of wedlock, and that his mother was a U.S. citizen who was physically present in the United States for a continuous period of 1 year prior to the Applicant's birth in [redacted]

The record includes a copy of the Applicant's birth certificate indicating that he was born on [redacted] in Mexico to "single" parents. The birth certificate establishes the relationship between the Applicant and his mother, and that he was born out of wedlock. The record also includes a copy of the birth certificate for the Applicant's mother, demonstrating that she was born in [redacted]

Arizona, on . The record therefore reflects that the Applicant's mother was a U.S. citizen at birth.

The Applicant must next demonstrate that his mother was physically present in the United States for a continuous period of 1 year at any time between the date of her birth, and when the Applicant was born.

The Applicant submitted evidence, including a record of admission of his grandparents to the United States for permanent residence on November 2, 1923, and the birth certificates of his mother's two siblings, born in 1925 and 1926, which shows that the Applicant's grandparents likely resided in the United States between late 1923 and the birth of the Applicant's mother on On the Form N-600, the Applicant represented that his mother lived in the United States from , until December 31, To demonstrate his mother's physical presence in the United States during this time, the Applicant has submitted his mother's birth certificate to show that she was born in Arizona on and that her parents were residents of Arizona at the time. The Applicant's has also submitted a summary of a sworn statement, which his maternal grandmother, [sic] [sic], provided before a U.S. government official on March 6, 1950, in connection with her application for a nonresident alien's border crossing identification card. The summary of the statement indicates that the Applicant's grandmother claimed legal residence in the United States from 1923 to .

We note that the Director's adverse decision questions, in part, whether , was, in fact, the Applicant's maternal grandmother. Specifically, the Director points out that the birth certificate of the Applicant's mother lists her mother's name as However, we find that the Applicant's explanation on appeal as to this inconsistency being a result of a ministerial error is supported by submitted documentation. Specifically, is identified on the Applicant's birth certificate as his grandmother. Furthermore, in her 1950 sworn statement discussed above, claimed that her mother's name was Finally, on the death certificate of the Applicant's mother, [sic] is listed as her mother. This evidence is sufficient to show that is likely the Applicant's maternal grandmother.

However, the issue remains whether the sole evidence on continuous physical presence, the birth certificate of the Applicant's mother and the sworn statement provided by the Applicant's grandmother, are sufficient to establish that the Applicant's mother was physically present in the United States for a continuous period of 1 year as required under section 309(c) of the Act. We find that these documents alone do not satisfy this requirement by the preponderance of the evidence standard.

The Act does not define the term "physical presence." However, physical presence has its literal meaning, and is computed by the actual time spent in the United States. *See* INS Interp. 301.1(b)(5)(iv), (6)(ii).

The birth certificate of the Applicant's mother shows that she was born in the United States on [redacted] Thus, the birth certificate establishes that the Applicant's mother was physically present in the United States on that date. However, the birth certificate does not demonstrate if, or how long the Applicant's mother resided in the United States after her birth. The Applicant has not submitted additional primary evidence to show that his mother remained in the United States for a period of one full year after she was born, such as baptismal, medical or census records, or similar documents. The Applicant relies on his grandmother's statement that she was in the United States legally from 1923 to [redacted] to prove his mother's physical presence in the United States for at least [redacted] after her birth. However, the statement does not provide the exact date of his grandmother's departure from the United States, nor does the record contain sufficient details on this period in the United States. Therefore, the statement does not conclusively establish that the Applicant's grandmother remained in the United States until his mother's first birthday on [redacted], or that the Applicant's mother was present in the United States during this time. As such, although the Applicant represented on the Form N-600 that his mother resided in the United States until December 31, [redacted] the Applicant has not submitted sufficient evidence to support this representation. Accordingly, we are unable to find based on the evidence the Applicant presented that his mother was more likely than not physically present in the United States for a continuous period of 1 year as required by section 309(c) of the Act.

A person may only obtain citizenship in strict compliance with the statutory requirements imposed by Congress. *INS v. Pangilinan*, 486 U.S. 875, 885 (1988). Even courts may not use their equitable powers to grant citizenship, and any doubts concerning citizenship are to be resolved in favor of the United States. *Id.* at 883-84; *see also United States v. Manzi*, 276 U.S. 463, 467 (1928) (stating that "citizenship is a high privilege, and when doubts exist concerning a grant of it … they should be resolved in favor of the United States and against the claimant"). Moreover, "it has been universally accepted that the burden is on the alien applicant to show his eligibility for citizenship in every respect." *Berenyi v. District Director, INS*, 385 U.S. 630, 637 (1967).

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). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of I-C-E-*, ID# 15568 (AAO Mar. 24, 2016)