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U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF F-M-A-

DATE: NOV. 30, 2016

APPEAL OF SAN BERNARDINO, CALIFORNIA FIELD 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) section 301(a)(7), 8 U.S.C. § 1401(a)(7), *amended by* Act of October 10, 1978, Pub. L. No. 95-432, 92 Stat. 1046. An individual born outside the United States who acquired U.S. citizenship at birth, or who automatically derived U.S. citizenship after birth but before the age of 18, may apply to receive a Certificate of Citizenship. For an individual claiming to be a U.S. citizen at birth, and who was born to married parents between December 24, 1952, and November 14, 1986, one parent must be a U.S. citizen, and that parent must have been physically present in the United States for 10 years (with at least 5 years occurring after the age of 14) before the individual's birth.

The Field Office Director, San Bernardino, California, denied the application, concluding that the Applicant did not submit sufficient evidence to demonstrate that her U.S. citizen father was physically present in the United States for the requisite period of time before the Applicant's birth.

The matter is now before us on appeal. On appeal, the Applicant resubmits evidence previously provided, and asserts that the Director did not properly consider this evidence which, in addition to the testimony adduced at the interview, establishes that the Applicant is eligible for the benefit sought.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

The record reflects that the Applicant was born in wedlock on [redacted] in Mexico to a U.S. citizen father, and a Mexican citizen mother. The Applicant's father was born in the United States in [redacted] The Applicant seeks a Certificate of Citizenship indicating that she acquired U.S. citizenship at birth from her father pursuant to former section 301(a)(7) of the Act.

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, 1029 n.3 (9th Cir. 2001) (internal quotation marks and citation omitted).

The Applicant was born outside of the United States to married parents, one of whom was a U.S. citizen and the other a foreign national. Accordingly, the Applicant's citizenship claim falls within the provisions of former section 301(a)(7) of the Act, which was in effect at the time of her birth in [redacted] and which provided 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 ten years, at least five of which were after attaining the age of fourteen years: *Provided*, That any periods of honorable service in the Armed Forces of the United States by such citizen parent may be included in computing the physical presence requirements of this paragraph.

Because the Applicant was born abroad, she is presumed to be a foreign national 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). 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 the U.S. Citizenship and Immigration Services (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).

II. ANALYSIS

The Applicant's father's birth certificate indicates the father was born in the United States, and the Applicant's familial relationship with her father is documented by her parents' marriage certificate and her birth certificate. The remaining issue in these proceedings is whether the Applicant has established by a preponderance of evidence that her father was physically present in the United States for at least 10 years before the Applicant's birth in [redacted] and that 5 of those years were after the father's 14th birthday in [redacted]

The Applicant represented on the Form N-600, Application for Certificate of Citizenship, that her father was present in the United States for 1 year following his birth in [redacted] and for 5 years between 1925 and 1930. The Applicant further represented that her father was in the United States from 1952 until 1990. To support these representations, the Applicant submitted a copy of the father's birth certificate, a trip pass coupon authorizing the father's family to travel from Texas to Missouri between November 24 and February 1925, the father's 1999 social security benefits statement, a 1952 document from the Immigration and Naturalization Services (INS) stating the father overcame the presumption of loss of citizenship under section 402 of the Nationality Act of

1940,[1] a letter confirming the father's employment in the United States between 1978 and 1989, and an affidavit from the father's brother-in-law.

In November 2015, the Director issued a request for evidence (RFE) asking the Applicant to submit additional documents supporting her claims of the father's presence in the United States during the statutory period. In response, the Applicant submitted a summary of the father's social security earnings for the years 1952-1989 and his social security benefit statements for the years 1999-2014.

The Director determined that all of this evidence was insufficient to demonstrate that the Applicant's father met the 10-year physical presence requirement and, thus, to establish that the Applicant acquired U.S. citizenship at birth under former section 301(a)(7) of the Act.

On appeal, the Applicant re-submits the social security documents and asserts that the Director's determination was in error. The Applicant states that the totality of the evidence she submitted, including the testimony provided at the interview, shows that her father was present in the United States for the requisite period of time.

We have reviewed the entire record of proceedings.[2] Upon review, we find that the evidence the Applicant submitted does not demonstrate that her father was "more likely than not" present in the United States for 10 years before her birth in and that 5 of these years were after the father's 14th birthday in

A. Physical Presence -1925

The father's birth certificate and the family travel pass show that the father was likely present in the United States for approximately 2 years after his birth in Although the Applicant represented on the Form N-600 that her father was also present in the United States from 1925 until 1930, the Applicant has not submitted evidence to support this representation.

B. Physical Presence 1952-

The Applicant has submitted evidence indicating that her father was in the United States for some time after he turned 14, and before the Applicant's birthday in However, this evidence is insufficient to demonstrate that the father was physically present in the United States for at least 5

[1] Section 402 of the Nationality Act of 1940, Pub. L. 76-853, 54 Stat. 1137, *repealed by* Immigration and Nationality Act of 1952, Pub. L. No. 82-414, 66 Stat. 163, provided that a U.S.-born national of the United States who remained for more than 6 months in a foreign state of which he or his parents were nationals, could overcome presumption of expatriation for certain reasons relating to foreign military and government service, by presenting satisfactory evidence to an immigration officer of the United States.

[2] While both the Director's decision and the Applicant's statement on appeal reference interview testimony, the record does not include, and the Applicant does not submit a written summary of the statements made before an interviewing officer. Accordingly, we are unable to address the probative value of the testimony which may have been offered at the interview in our decision.

years during this time period. The INS document issued in May 1952 and the social security statement reflecting the father's earnings beginning in 1952 demonstrate that the father came to the United States in 1952. The social security statement shows that the father worked in the United States during the 5-year period between 1952 and 1957. However, his reported earnings for the years 1952 and 1957 are minimal, $68.46 and $6.80, respectively. This indicates that the father spent only parts of those years in the United States. Similarly, the amount of income reported for the years 1953 and 1954, $512[3] and $674,[4] suggests that the Applicant's father was not physically present in the United States for the whole year in 1953 and in 1954. The social security statement does not show any income for the father between 1958 and the year of the Applicant's birth. Absent additional evidence of the father's presence in the United States from 1952 to such as census records, residential lease or rental agreements, or employment and financial documents, the social security earnings alone show at best that the Applicant's father was physically present in the United States for no more than 4 years after he turned 14 in and before the Applicant's birth in

The Applicant has also submitted an affidavit from the father's brother-in-law, who claims that he and the Applicant's father grew up together in Mexico and moved to the United States in 1950. This statement, however, is inconsistent with the Applicant's representation on the Form N-600 that her father came to the United States in 1952, and the INS documentation of the father's return to the United States in May 1952 after a prolonged absence. The brother-in-law does not provide information about his, or the Applicant's father's residence and employment in the United States in the 1950s. Because the affidavit lacks detail and is not supported by the other evidence in the record, we cannot give it a significant evidentiary weight.

C. Physical Presence 1978-1989

While the Applicant has submitted a letter confirming her father's employment in the United States from 1978 until 1989, this employment was after the Applicant's birth and is therefore irrelevant in these proceedings. Similarly, while the social security benefits statements issued between 1999 and 2014 confirm that the father was employed in the United States for some time, they have no probative value in establishing the specific periods of his employment.

We find, therefore, that the evidence the Applicant submitted does not tend to demonstrate that her father was likely physically present in the United States for 10 years before the Applicant's birth in 5 of which were after the father's 14th birthday in

[3] According to the Department of Labor Bureau of Labor Statistics Consumer Price Index (CPI) inflation calculator, available at http://www.bls.gov/data/inflation_calculator.htm, the $512 income in 1953 is equivalent to $4,618 today.
[4] According to the CPI inflation calculator, this income had the same buying power in 1954 as $6,034 has today.

III. CONCLUSION

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). The Applicant has not met that burden, because she has not demonstrated that her father was likely present in the United States for the requisite period of time before her birth. Accordingly, the Applicant has not established that she acquired U.S. citizenship at birth from her U.S. citizen father pursuant to former section 301(a)(7) of the Act.

ORDER: The appeal is dismissed.

Cite as *Matter of F-M-A-*, ID#12270 (AAO Nov. 30, 2016)