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U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF R-M-N-

DATE: OCT. 20, 2016

APPEAL OF NEW YORK, NEW YORK DISTRICT OFFICE DECISION

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

The Applicant, a native and citizen of the Dominican Republic, seeks a Certificate of Citizenship. *See* Immigration and Nationality Act (the Act) section 309(c), 8 U.S.C. § 1409(c). 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 acquire citizenship at birth and who was born after December 23, 1952, to an unmarried U.S. citizen mother, the mother must have been physically present in the United States for 1 continuous year before the individual's birth.

The District Director, New York, New York, denied the application, concluding that the Applicant did not establish that his mother was physically present in the United States for 1 year before the Applicant was born, as required for acquisition of U.S. citizenship at birth. In addition, the Director determined that the Applicant did not meet the age and permanent resident status requirements to derive U.S. citizenship from his mother after birth.

The matter is now before us on appeal. On appeal, the Applicant does not contest the Director's determination that he did not derive U.S. citizenship after birth. The Applicants asserts, however, that he has demonstrated by a preponderance of the evidence that his mother satisfied the requisite physical presence in the United States prior to his birth and that he has thus established that he acquired U.S. citizenship at birth from his mother.

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

I. LAW

The record reflects that the Applicant was born out of wedlock on [redacted] in the Dominican Republic. The Applicant's mother was also born in the Dominican Republic but, according to the Applicant, she acquired U.S. citizenship at birth from her mother, the Applicant's grandmother. The Applicant's birth certificate does not provide information about the Applicant's father, and there is nothing in the record to suggest that he was a U.S. citizen. The Applicant seeks a Certificate of Citizenship indicating that he acquired U.S. citizenship at birth from his mother pursuant to section 309(c) 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 in to an unmarried mother who, he claims, was a U.S. citizen. Accordingly, if the Applicant can demonstrate that his mother was a U.S. citizen at the time of his birth, the Applicant's citizenship claim will fall within the provisions of section 309(c) of the Act, which provides, 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.

II. ANALYSIS

The issues in the matter before us are whether the Applicant has established that his mother was a U.S. citizen at the time of his birth and, if so, whether the evidence the Applicant submitted is sufficient to show that the mother was physically present in the United States for a continuous period of 1 year before the Applicant's birth in

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 evidence includes: birth, marriage, divorce, and death certificates; a copy of the U.S. passport of the Applicant's mother; photographs; and affidavits. Upon review of the entire record, we conclude that the Applicant has demonstrated that his mother was likely a U.S. citizen at the time of his birth. However, the evidence the Applicant submitted is insufficient to show that the mother was continuously present in the United States for 1 year before his birth. We find, therefore, that the Applicant has not established that he acquired U.S. citizenship at birth from his mother.

A. Citizenship of the Applicant's Mother

To establish acquisition of U.S. citizenship at birth under section 309(c) of the Act, the Applicant must first show that he was born to a U.S. citizen mother. The birth certificate of the Applicant's mother shows that she was born in the Dominican Republic in As proof of his mother's U.S. citizenship, the Applicant submitted a copy of the mother's U.S. passport, her statement, a copy of her birth certificate, and the birth certificate of the Applicant's maternal grandmother. The mother's U.S. passport was issued in 2006. While the passport is conclusive proof that the Applicant's mother is a U.S. citizen, in view of the fact that she was born in the Dominican Republic, the

passport alone does not establish that the Applicant's mother was a U.S. citizen in [redacted] when the Applicant was born. In her affidavit, the Applicant's mother states that she was sworn in as a U.S. citizen in 1992 at the American Embassy in the [redacted] and issued a U.S. passport. She claims that she became a U.S. citizen through her mother, who was born in Puerto Rico.

The United States acquired Puerto Rico from Spain in 1899. Under the treaty of cession with Spain ratified on April 11, 1899, natives of Spain or the Spanish peninsula then residing in Puerto Rico became U.S. nationals on ratification date, unless they chose to retain Spanish allegiance by declaration on or before April 11, 1900.[1] On April 12, 1900, Congress granted Puerto Rican citizenship to all former Spanish subjects who resided in Puerto Rico at the time.[2] Children born in Puerto Rico on and after April 12, 1900, to Puerto Rican citizen parents, became U.S. nationals and Puerto Rican citizens at birth. In 1917, Congress granted U.S. citizenship to all Puerto Rican citizens unless they elected to retain their political status as U.S. or Spanish nationals by submitting a written declaration.[3]

The birth certificate of the Applicant's maternal grandmother reflects that she was born in Puerto Rico in 1908 to parents who were natives of Puerto Rico. Although the nationality of her parents is not specified on the birth certificate, because they were born in Puerto Rico, it is reasonable to assume that they were Spanish subjects in 1899, when the treaty of cession was ratified. Thus, they became U.S. nationals and citizens of Puerto Rico in 1900.[4] It appears therefore, that the Applicant's maternal grandmother was also a Puerto Rican citizen at birth, and that she became a U.S. citizen upon collective naturalization of the citizens of Puerto Rico in 1917. In [redacted] she gave birth to the Applicant's mother in the Dominican Republic. Section 309(h) of the Act, 8 U.S.C. § 1401(h), provides that the following shall be nationals and citizens of the United States at birth:

> a person born before noon . . . May 24, 1934, outside the limits and jurisdiction of the United States of an alien father and a mother who is a citizen of the United States who, prior to the birth of such person, had resided in the United States.

The birth certificate of the Applicant's mother shows that she was born in [redacted] to the Applicant's grandmother, identified as a person of "American nationality." The birth certificate is silent as to the nationality of her father, and there is no evidence that he was a U.S. citizen. Accordingly, the Applicant's mother meets the requirement of section 309(h) of the Act in that she was born to a U.S. citizen mother and a foreign national father. Further, the birth certificate of the Applicant's grandmother shows that she was born in Puerto Rico. As such, she met the requirement of residence

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[1] *See* Article IX, Treaty of Peace with Spain of April 11, 1989 (Treaty of Paris).
[2] *See* Section 7, Act of April 12, 1900, 31 Stat. 77.
[3] *See* section 5, Act of March 2, 1917, Pub. L. No. 64-368, 39 Stat. 951.
[4] As the parents were both natives of Puerto Rico, they would have been unable to preserve their allegiance to Spain even if they wanted to do so, as such election was available only to those Spanish subjects who were natives of Spain or the Spanish peninsula. *See generally* Treaty of Peace with Spain of April 11, 1989, *supra*; *Matter of H-*, 3 I&N Dec. 286 (BIA 1948).

in the United States prior to the birth of the Applicant's mother in [redacted] Therefore, we conclude that although the Applicant's mother was born in the Dominican Republic, she likely acquired U.S. citizenship at birth from her mother.

In view of the above, we conclude that the Applicant has established by a preponderance of the evidence that he was born to a U.S. citizen mother.

B. Physical Presence of the Applicant's Mother in the United States

We next consider whether the Applicant has demonstrated that his U.S. citizen mother was physically present in the United States for a continuous period of 1 year, as required to transmit U.S. citizenship under section 309(c) of the Act. Physical presence has its literal meaning, and is computed by the actual time spent in the United States.[6]

The Applicant did not include information about his mother's presence in the United States on the Form N-600, Application for Certificate of Citizenship. In 2015, the Director issued a request for evidence (RFE) asking the Applicant to submit proof that the mother was physically present in the United States prior to his birth. In response, the Applicant submitted several photographs of his mother, a certificate of non-existence of certain Dominican Republic migration records, and an affidavit. The Applicant does not submit new evidence on appeal. He claims, however, that the documents he already provided meet the preponderance of evidence standard of proof, in that they establish his mother's requisite physical presence in the United States prior to [redacted] We disagree.

In evaluating the evidence, we are guided by *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989), which states that "[t]ruth is to be determined not by the quantity of evidence alone but by its quality." 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).

The Applicant states that he is unable to provide primary evidence of his mother's presence outside the Dominican Republic prior to his birth because such records do not exist. The Applicant has previously submitted a certificate from the Dominican Republic authorities, indicating that the

[5] Residence in Puerto Rico after April 10, 1899, qualifies as residence in the United States for purposes of citizenship at birth abroad. *See* INS Interp. 301.1(b)(2); *Matter of F-*, 1 I&N Dec. 287 (BIA 1942).
[6] *See* INS Interp. 301.1(5)(iv), (6)(ii).

migration records prior to 2000 are unavailable. To overcome the unavailability of this primary evidence, the Applicant has submitted several photographs of his mother, and an affidavit. We find, however, that the photographs, without more, do not tend to show that the Applicant's mother was likely present in the United States for at least 1 continuous year before the Applicant's birth in [redacted] While the inscription on the back of one of the photos places the Applicant's mother in Puerto Rico on June 13, 1951, and one of the photographs is dated October 24, 1952, location not noted, the remaining photographs do not specify the dates and locations they were taken. As such, the photographs alone are insufficient to show that the mother was likely continuously present in Puerto Rico, or in any other parts of the U.S. territory, for at least 1 year prior to [redacted] The Applicant has also provided an affidavit, executed jointly by several individuals in the Dominican Republic in 2014. In the affidavit, those individuals declared that they knew of the Applicant's mother's frequent travels to the United States, including one trip she took to Puerto Rico in 1954, which lasted 2 years. However, we cannot give this affidavit significant evidentiary weight, as it does not include information about the affiants' relationship to the Applicant's mother, the source of their knowledge about her foreign travel, the duration of the trip she purportedly took to Puerto Rico in 1954, or any documentation that would corroborate their claims. When affidavits are submitted, they must overcome the unavailability of both primary and secondary evidence. 8 C.F.R. § 103.2(b)(2). The sole affidavit the Applicant submitted does not meet this requirement for the reasons stated above.

Accordingly, we are unable to find based on the evidence the Applicant presented that his mother was physically present in the United States for a continuous period of 1 year. We conclude, therefore, that the Applicant has not established that he acquired U.S. citizenship at birth from his mother under section 309(c) of the Act.

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). Here, that burden has not been met, as the Applicant has not demonstrated that his mother was likely continuously present in the United States for 1 year before the Applicant's birth.

ORDER: The appeal is dismissed.

Cite as *Matter of R-M-N-*, ID# 11491 (AAO Oct. 20, 2016)