U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A-P-R-

DATE: AUG. 21, 2017

APPEAL OF EL PASO, TEXAS FIELD OFFICE DECISION

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

The Applicant, who was born in Mexico in 1992, 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 one continuous year before the individual's birth.[1]

The Director of the El Paso, Texas Field Office denied the application, concluding the Applicant provided insufficient evidence to demonstrate that his U.S. citizen mother was physically present in the United States for one continuous year prior to his birth, as required under section 309(c) of the Act.

On appeal, the Applicant submits additional evidence and asserts that the totality of the evidence demonstrates his mother satisfied the U.S. physical presence requirements in section 309(c) of the Act.

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

[1] The U.S. Supreme Court recently held that the different U.S. physical presence requirements for unwed mothers in section 309(c) of the Act (continuous period of one year), and unwed fathers in former section 301(a)(7) of the Act, 8 U.S.C. § 1401(a)(7) and current section 301(g) of the Act (10 or 5 years, respectively) violate the equal protection provisions of the Fifth Amendment. *Sessions v. Morales-Santana*, 137 S. Ct. 1678, 1701 (2017) . Nevertheless, the Court declined to apply the section 309(c) continuous period of one year physical presence requirement to the child of an unwed U.S. citizen father, stating instead that "[g]oing forward, Congress may address the issue and settle on a uniform prescription that neither favors nor disadvantages any person on the basis of gender," and that in the interim the longer physical presence requirement should also apply, prospectively, to children born to unwed U.S. citizen mothers. *Id.* Because we find in this case that the Applicant has not established that his mother was physically present in the United States for a continuous period of one year, *Sessions v. Morales-Santana* does not impact the outcome in this matter.

I. LAW

The record reflects that the Applicant was born in Mexico on [redacted] 1992, to parents who never married. His mother is a U.S. citizen by birth. The record contains no evidence indicating who his father is, or that his father is a U.S. citizen. The Applicant seeks a Certificate of Citizenship indicating that he acquired U.S. citizenship at birth from his mother.

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). Based on his year of birth, the Applicant's citizenship claim falls 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.

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 his 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)).

II. ANALYSIS

The only issue on appeal is whether the Applicant has provided sufficient evidence to establish that prior to his birth on [redacted] 1992, his U.S. citizen mother was physically present in the United States for a continuous period of one year, as required under former section 309(c) of the Act.

The Applicant claims that the record demonstrates by a preponderance of the evidence that his mother met this requirement. He cites to Department of State guidance in volume 7 of the Foreign Affairs Manual (7 FAM) and to a U.S. Seventh Circuit Court of Appeals decision, for the proposition that U.S. physical presence need not be counted to the exact minute, and a citizen parent who was in the United States for a sufficient number of years may transmit citizenship even when the exact months, days, or hours of presence are unknown. The Applicant asserts, on this basis, that his mother's social security earnings statement sufficiently shows that she was physically present in the United States at least between 1982 and 1986, and that this evidence alone satisfies section 309(c) physical presence requirements. He also submits his mother's Texas birth certificate and Texas birth certificates for two of his siblings, and he contends that verbal testimony that his mother provided to an officer at the El Paso, Texas Field Office further supports his claim.

Upon review, we find that the Applicant provided insufficient evidence to demonstrate that his mother was physically present in the United States for a continuous period of one year prior to his birth in [redacted] 1992.

A. Definition of U.S. Physical Presence

The Applicant cites to Department of State guidance contained at 7 FAM 1133.3-4(b) to support claims that physical presence need not be counted to the exact minute, and that a citizen parent who was in the United States for a sufficient number of years may transmit citizenship even if the exact months, days, or hours are unknown. *See* 7 FAM 1133.3-4, *Methods of Counting Physical Presence*. The Department of State guidance clarifies further at 7 FAM 1133.3-4(c), however, that if it is not clear that the citizen parent has more than enough physical presence in the United States, it is important to obtain the exact dates of the parent's entries and departures. *See* 7 FAM 1133.3-4(c). According to this guidance, the term "physical presence" in the Applicant's case therefore has its literal meaning, and is computed by the actual time spent in the United States.

The Applicant also cites to the U.S. Seventh Circuit Court of Appeals decision, *U.S. ex rel Rongetti v. Neelly*, 207 F.2d 281 (7th Cir. 1953), to support the claim that he does not need to provide evidence establishing exactly when his mother was physically present in the United States. However, aside from simply citing to the case, he does state how the decision supports his claim, as a review of the case reflects that it does not pertain to, or address physical presence or derivative citizenship issues. Similarly, the Applicant cites to regulations at 8 C.F.R. § 341.2, which concern Certificates of Citizenship generally, that do not address physical presence requirements under the Act.

Further, the Applicant's case is within the jurisdiction of the U.S. Fifth Circuit Court of Appeals, not the Seventh Circuit. We are not required to accept a determination by one circuit court of appeals as binding throughout the United States. *Matter of Anselmo*, 20 I&N Dec. 25, 31 (BIA 1989). Although the reasoning underlying the Seventh Circuit Court's decision will be given due consideration, the analysis does not have to be followed as a matter of law. *Id.* at 31.

Upon review, the term "physical presence" has its literal meaning, and is computed by the actual time spent in the United States. Any absences from the country must therefore be subtracted in calculation of the Applicant's mother's U.S. physical presence. *See* 7 FAM 1133.3-4. *See also, Matter of Flores-Maldonado*, 10 I&N Dec. 22, 25 (BIA 1962) (continuous physical presence in the United States computed on the basis of the number of hours a commuter alien was actually in the United States each day while traveling to, engaged in, and returning from his employment.)

B. The Applicant Did Not Establish His Mother's One Year of Continuous U.S. Physical Presence

The Applicant represents on the Form N-600, Application for Certificate of Citizenship, that his mother has been physically present in the United States since January 1, 1982. As discussed below, however, he has provided insufficient evidence to corroborate this assertion.

The Applicant submits his mother's birth certificate, her social security earnings statement, and birth certificates for two of the Applicant's siblings born in Texas to establish his claim. The mother's birth certificate establishes her U.S. physical presence at the time of her birth on [redacted] 1958, and the siblings' birth certificates establish his mother's presence in the country when they were born on [redacted] 1987, and [redacted] 1989. The Applicant further claims that his mother's social security earnings statement sufficiently demonstrates that she was physically present in the United States at minimum between 1982 and 1986.[2]

The evidence that the Applicant has submitted shows that his mother was physically present in the United States during certain years, as she gave birth to two children and has reported earned income. However, what the record does not show are the dates and places of her physical presence during the years corresponding to these records, and does not demonstrate *continuous* physical presence in the United States during any of the stated years.

The record shows that the Applicant appeared for an interview at the El Paso Field Office regarding his citizenship application. At its conclusion, the Applicant was provided with a request for evidence (RFE) that detailed the types of evidence he could submit to support his claim regarding his mother's physical presence, as he only submitted the social security earnings statement at that time. The Applicant did not respond to the request for evidence. Although he submits the birth certificates of his brothers on appeal, he does not submit any testimony from his mother detailing her dates and places of residence and employment, or other evidence listed on the RFE that would support his claim that his mother had one year of continuous physical presence prior to his birth.[3]

Absent other detailed evidence that provides insight into where the Applicant's mother lived and worked during the years she claims to have been in the United States, her birth certificate, those of the Applicant's brothers, and the mother's social security earnings statement are not, either by themselves or viewed in the aggregate, sufficient to meet the Applicant's burden of proof. Consequently, based on the record presently before us, we do not conclude that the Applicant's mother was in the United States continuously for one year prior to his birth in 1992.[4]

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[2] The Applicant's mother's social security earnings statements show earnings in the range of $0 - $9,525 during the 1981 through 1992 years.

[3] On appeal, the Applicant claims that his mother testified about her physical presence during an interview at the El Paso, Texas Field Office, but the record does not contain her testimony and the Applicant does not provide an affidavit or other testimonial evidence from his mother on appeal.

[4] Suggested evidence according to the RFE includes, but is not limited to: medical or school records; property rental or ownership records; or utility or other bills.

III. CONCLUSION

The Applicant has provided insufficient evidence to establish that his mother was physically present in the United States for a continuous period of one year prior to his birth. Accordingly, he has not demonstrated that he acquired U.S. citizenship at birth through his U.S. citizen mother under section 309(c) of the Act.

ORDER: The appeal is dismissed.

Cite as *Matter of A-P-R-*, ID# 528433 (AAO Aug. 21, 2017)