U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF M-G-L-

DATE: DEC. 6, 2017

APPEAL OF HARLINGEN, TEXAS FIELD OFFICE DECISION

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

The Applicant, who was born in 1970 in Mexico, seeks a Certificate of Citizenship indicating that he acquired U.S. citizenship at birth through his father. *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 parent, 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 Director of the Harlingen, Texas Field Office denied the Form N-600, Application for Certificate of Citizenship. The Director concluded that affidavit evidence submitted to demonstrate the Applicant's father was physically present in the United States for 10 years prior to the Applicant's birth, at least five after he turned 14, were unsupported by corroborative evidence and were inconsistent with statements in the father's file; and overall, the record was insufficient to establish the father met U.S. physical presence requirements to transmit citizenship to the Applicant.[1]

On appeal the Applicant submits additional evidence, and claims that the record shows, by a preponderance of the evidence, that his father met required U.S. physical presence conditions. Alternatively, he asserts that the Director's decision violated regulations set forth at 8 C.F.R. § 103.2(b)(16), by referring to undisclosed derogatory evidence in his father's file. He argues that he has no way of knowing whether the Director's statements about this evidence were accurate, complete, and true; he has not been provided an opportunity to rebut the derogatory information; and

[1] The Director indicates that the Applicant's citizenship claim was determined under former section 301(g) of the Act, 8 U.S.C. § 1401(g). Former section 301(a)(7) of the Act was re-designated as section 301(g) by the Act of October 10, 1978, Pub. L. No. 95-432, 92 Stat. 1046 (1978). This does not affect our decision, as we have *de novo* review, and the requirements for former sections 301(a)(7) and 301(g) of the Act were the same after the re-designation, and until 1986.

the Director's decision should therefore be reversed or remanded so he may have an opportunity to review his father's file.

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

I. LAW

The record reflects that the Applicant was born in Mexico on [redacted] 1970, to married parents, a U.S. citizen father and a Mexican citizen mother.[2] 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 the Applicant's date of birth, his citizenship claim falls within the provisions of former section 301(a)(7) of the Act which provided, in part, that the following individuals acquired U.S. citizenship 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.

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)).

The regulation at 8 C.F.R. § 103.2(16)(b) pertains to inspection of the record of proceeding which constitutes the basis for a decision, and provides, in part:

> (i) [I]f the decision will be adverse to the applicant or petitioner and is based on derogatory information considered by the Service and of which the applicant or petition is unaware, he/she shall be advised of this fact and offered an opportunity to rebut the information and present information in his/her own behalf before the decision is rendered, except as provided in paragraphs (b)(16)(ii), (iii), and (iv) of this section. Any explanation, rebuttal, or information presented by or in behalf of the applicant or petitioner shall be included in the record of proceeding.

[2] A Certificate of Citizenship demonstrates that the Applicant's father, who was born in Mexico in 1940, acquired U.S. citizenship at birth. Marriage documentation shows the Applicant's parents married in Mexico in 1961.

(ii) [A] determination of statutory eligibility shall be based only on information contained in the record of proceeding which is disclosed to the applicant of petition, except as provided in paragraph (b)(16)(iv).

II. ANALYSIS

The issue in this case is whether the Applicant has sufficiently shown that his U.S. citizen father was physically present in the United States for 10 years prior to [redacted] 1970, at least five years of which occurred after his father's 14th birthday on [redacted] 1954, as required under former section 301(a)(7) of the Act.

The Applicant claims that the record demonstrates by a preponderance of the evidence that his father met these requirements. Although he does not submit additional evidence of physical presence on appeal, the record contains affidavits from family members, a friend, and an employer; marriage and death certificates; social security information; immigration petition affidavit of support documentation; and non-precedent AAO decisions.

In the event that the record is found to be insufficient to establish his claims, the Applicant cites to the regulation at 8 C.F.R. § 103.2(b)(16), indicating that an applicant must be informed of derogatory information to be used against him or her and must be given a reasonable amount of time to rebut the information. He asserts that the Director's decision referenced undisclosed derogatory evidence from his father's file; that he has not been provided an opportunity to review or rebut the derogatory information; and the decision should therefore be reversed or remanded so he may have an opportunity to review his father's file.

For the reasons discussed below, we find the Applicant has not established his claims.

A. Affidavits

To show that his father met U.S. physical presence requirements prior to his birth, the Applicant submits affidavits and letters from his mother, his father's sister, a friend, and an employer; however, this evidence has limited evidentiary value, in that the claims lack detail and they are unsupported by independent corroborative evidence.

In ascertaining the evidentiary weight of the affidavits and letters, we must determine the basis for the affiant's knowledge of the information to which she or he is attesting, and whether the statements are plausible, credible, and consistent both internally and with the other evidence of record. *See Matter of E-M-*, 20 I&N Dec. 77 (Comm'r. 1989). *See also, Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998) (If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the affected party to submit corroborative evidence.)

The Applicant's mother states that she has personal knowledge of the father's cumulative physical presence in the United States, beginning in 1960, for more than five years prior to the Applicant's

birth. Her claims are based on her marriage to the Applicant's father in 1961, and having met him a year before their marriage. Both the marriage and meeting, though, occurred in Mexico. The Applicant's mother does not claim that she was in the United States with his father, and she does not otherwise demonstrate personal knowledge of his U.S. physical presence during the claimed time periods. Moreover, even if she had shown personal knowledge, her claims would have limited evidentiary value, in that they are general, do not specify exact dates the father was in the United States, do not provide exact details about where he lived and worked, and are unsupported by independent evidence.

Affidavits from the father's younger sister, his friend, and his employer similarly have limited evidentiary weight. The sister claims personal knowledge about the father's cumulative physical presence in the United States for more than five years from around 1957 to the time of the Applicant's birth. However, her assertions also lack detail, and she does not claim or demonstrate personal knowledge of the father's U.S. physical presence.

The father's friend indicates that he met the Applicant's father in Texas in April 1963, that they worked together until around August 1967, and that the Applicant's father was physically present in the United States for more than five cumulative years prior to the Applicant's birth. In addition, a letter from an employer states that the Applicant's father was employed full time between 1967 and 1972. Neither of the claims contains exact dates and locations of the father's physical presence, residence, or employment in the United States, nor do they describe interactions with the father. The assertions are also uncorroborated by residence, employment receipt, or other contemporaneous independent evidence. Moreover, even if we accepted the affiants' claims (which we do not), the assertions would only show up to 6 ½ years of physical presence prior to the Applicant's birth, not the 10 years required under former section 301(a)(7) of the Act.

B. Conflicting Statement and Documentary Evidence

In addition, the affiants' claims conflict with a July 1978 statement made by the Applicant's father on a Form I-134, Affidavit of Support, which was submitted by the Applicant. Specifically, on that form the Applicant's father claimed under oath that he resided in the United States only since 1972 – after the Applicant's birth. This inconsistency must be resolved with independent objective evidence. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Any attempt to explain or reconcile such inconsistencies will not suffice unless the Applicant submits competent objective evidence pointing to where the truth lies. *Id.*

The documentary evidence in the record does not resolve the inconsistency or support the Applicant's claim that his father was physically present in the United States for 10 years prior to the Applicant's birth in [redacted] 1970, at least 5 years after the father turned 14 in [redacted] 1954. The father's Certificate of Citizenship establishes the Applicant's father acquired U.S. citizenship through a citizen parent at the time of his birth. It is uncontested, though, that the Applicant's father was born in Mexico, and the Certificate of Citizenship, which was issued in April 1972, does not show that his father was physically present in the United States before the Applicant's birth in 1970.

Furthermore, although the father's social security earnings statement for the time period between 1972 to 1988, social security disability documentation dated in 1994, and the father's 1994 Texas death certificate reflect some amount of U.S. physical presence, this presence did not occur until after 1972, and after the Applicant's birth. This evidence corroborates the father's Form I-134 statement.

Here, though the Applicant has had ample opportunity to reconcile the inconsistency between his own claims and the documents reflecting post-1972 physical presence, he has not done so. The Director sent a letter to the Applicant prior to issuing a final decision, requesting additional evidence of his father's U.S. physical presence. The Director provided the Applicant with detailed examples of such evidence, including his father's residence, utility, school, employment, bank, medical, and insurance documentation during the required time period. The Director also allowed the Applicant extra time to submit such evidence. In addition, the Applicant had an opportunity to provide additional evidence to our office when filing the appeal. Despite this, the Applicant did not submit, to the Director or to our office, additional evidence to corroborate his claims.

Upon review, the record contains insufficient independent objective evidence to overcome inconsistent statements about the father's physical presence in the United States prior to the Applicant's birth, or to establish that the Applicant's father met former section 301(a)(7) of the Act U.S. physical presence requirements.

C. Non-precedent Decisions

The Applicant submits three prior decisions from our office to demonstrate that evidence such as his is sufficient to establish citizenship; however, the decisions are not published as precedent decisions, and therefore do not bind U.S. Citizenship and Immigration Services officers in future adjudications. *See* 8 C.F.R. § 103.3(c).

Non-precedent decisions apply existing law and policy to the specific facts of the individual's case, and may be distinguishable based on the evidence in the record of proceedings, the issues considered, and applicable law and policy. Unlike the Applicant's situation, for example, two of the unpublished decisions that the Applicant submits pertain to another section of law, with different physical presence requirements. Moreover, all three of the unpublished decisions refer to and discuss additional documentary evidence that was submitted in those cases to corroborate physical presence assertions made in affidavits.

The Applicant 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. at 468. Here, we find the Applicant has provided insufficient evidence to resolve inconsistencies about when his father was physically present in the United States, or to establish that his father was physically present in the United States for the time period required under former section 301(a)(7) of the Act.

D. Derogatory Evidence

Alternatively, the Applicant contends that the Director's decision violated regulations set forth at 8 C.F.R. § 103.2(16)(b) by referring to undisclosed derogatory evidence in his father's immigration file. The Applicant asserts that he was not provided with an opportunity to rebut the derogatory information; he has no way of knowing whether the Director's statements are accurate; and that the Director's decision should therefore be reversed or remanded so he may have an opportunity to review his father's file. For the reasons discussed below, we find the Applicant has not shown the Director violated the provisions in 8 C.F.R. § 103.2(16)(b).

The Director stated in the denial that the father's file revealed that when he applied for his Certificate of Citizenship in 1971, he indicated that he had always lived in Mexico, and that this contradicted statements contained in the affidavits. A review of the decision reflects, however, that although this derogatory evidence was an additional factor in the Applicant's case, the denial was not based on this evidence, as required under 8 C.F.R. § 103.2(b)(16)(i) and (ii). Instead, the decision reflects that the denial was based on the overall insufficiency of evidence in the record on the father's required physical presence in the United States.[3]

In addition, although the Applicant may not have been aware of his father's specific citizenship application statement, Form I-134 evidence that the Applicant submitted with his Form N-600 also reflects the father's claim that he resided in the United States only since 1972. The Applicant should therefore have been aware of claims by his father that he always lived in Mexico prior to the Applicant's birth in 1970. As such, the Applicant has not established violation of the procedures set forth at 8 C.F.R. § 103.2(16)(b).

III. CONCLUSION

The Applicant provided insufficient evidence to establish that his father was physically present in the United States for 10 years prior to his birth, at least five after his father turned 14 for acquisition of citizenship under former section 301(a)(7) of the Act. He has also not shown that procedures set forth at 8 C.F.R. § 103.2(16)(b) were violated in his case.

ORDER: The appeal is dismissed.

Cite as *Matter of M-G-L-*, ID# 613799 (AAO Dec. 6, 2017)

[3] The Director states, in pertinent part, "[y]ou have failed to provide sufficient documentary evidence that your father . . . was physically present in the United States for the required period of time. . . ."