U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF R-S-H-

DATE: JULY 27, 2017

APPEAL OF DALLAS, TEXAS FIELD OFFICE DECISION

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

The Applicant, born in Mexico in 1970, 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 parent, and that parent must have been physically present in the United States for 10 years (with at least five years occurring after the age of 14) before the individual's birth.

The Director of the Dallas, Texas Field Office denied the application. The Director concluded that the record contained insufficient evidence to establish that the Applicant's U.S. citizen mother was physically present in the United States for 10 years prior to the Applicant's birth, at least five of those years occurring after she turned 14, as required under former section 301(a)(7) of the Act.[1]

On appeal, the Applicant contends that the Director did not review all of the evidence and applied an incorrect burden of proof in his case. He claims that the record shows, by a preponderance of the evidence, that his mother was physically present in the United States for the required period of time set forth under the former Act.

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

I. LAW

To assess the Applicant's eligibility for a Certificate of Citizenship, we first need to determine which law applies. The record reflects that the Applicant was born on [redacted] 1970, in Mexico to married parents. His father is a foreign national and his mother is a native-born U.S. citizen.

[1] The Director's decision indicates that the Applicant's citizenship claim was made pursuant to section 301(g) of the Act. Former section 301(a)(7) of the Act (of 1952) was re-designated as section 301(g) by the Act of October 10, 1978, Pub. L. No. 95-432, 92 Stat. 1046 (1978). The requirements of former sections 301(a)(7) and 301(g) of the Act remained the same after the re-designation and until 1986.

For transmitting citizenship to a child born abroad when one parent is a U.S. citizen, we apply 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). Because the Applicant was born in 1970, his derivative citizenship claim falls within the provisions of former section 301(a)(7) of the Act which provided, in part, that the following individuals acquired 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 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 issue on appeal is whether the Applicant has provided sufficient evidence to establish that his mother was physically present in the United States for 10 years prior to his birth in [redacted] 1970, at least five years of which occurred after his mother's 14th birthday in [redacted] 1962, 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 mother met these requirements, and he contends that the Director did not consider all of the evidence and applied an incorrect standard of proof to his case. In support, the record contains birth, baptism, and marriage certificates, lawful permanent residence documentation, and affidavits from family members and friends.

For the reasons discussed below, we find that the Applicant has provided insufficient evidence to demonstrate that his mother was physically present in the United States for 10 years prior to the Applicant's birth, at least 5 of which were after she turned 14.

A. Affidavit Evidence of Mother's U.S. Physical Presence Prior to Applicant's Birth

The Applicant submits affidavits from his mother and from family friends discussing the mother's physical presence in the United States prior to the Applicant's birth. In ascertaining the evidentiary weight of the affidavits, 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). Here, the affidavits submitted by the Applicant have limited evidentiary value, in that they lack detail and are unsupported by other evidence.

The Applicant's mother claims, for example, that she lived with her parents and worked on a ranch in Texas on or about 1953, and lived with her parents and worked as help for other people in Texas on or about 1957. She continues that she was in helping a couple with house chores on or about 1959, and that she was in Texas on or about 1962, and traveled north with others to work on farms. In addition, she states that she worked with her sister as a housekeeper in Texas on or about 1964, and that she worked on farms "up north" in Texas after 1964. Her claims are general, do not specify the exact dates she was in the United States, and do not provide details about exactly where she lived and worked, with whom, and when.

The affidavits from family friends also have limited evidentiary weight.[2] Family friend, G- claims knowledge of the mother's presence in the United States because her parents worked with his relative in in 1953. The statement, however, is vague, as the affiant does not describe interactions with the Applicant's mother or provide details explaining the circumstances of his claimed personal knowledge of her U.S. presence. The statement also does not specify exact timeframes when the Applicant's mother was in the United States or provide the addresses where she lived. The statement also lacks details about where the mother's parents worked and with whom. Affidavits from seven other friends are similarly lacking in detail. R-D claims only that she knew the Applicant's mother and family in 1957 when they were neighbors in Texas. C-L- and R-C- state briefly that the Applicant's mother helped family with house chores in Texas in 1959. Z-V-, F-V-, and F-, claim they knew the Applicant's parents in 1962 when the parents began dating, and that the Applicant's mother has lived in the United States since they have known her. and add that that they also worked with the Applicant's mother as farm workers. H-M- asserts knowledge of the Applicant's mother's residence in the United States since 1964, and states that they both worked together as housekeepers. The statements all lack specific details regarding dates and time periods when the Applicant's mother was physically present in the United States and regarding the mother's specific home and employment addresses during claimed time periods. They also do not describe interactions with the Applicant's mother, and specific circumstances regarding their knowledge of the mother's U.S. physical presence. Moreover, the record does not contain evidence of the family friends' own physical presence in the United States during the claimed time periods.

[2] Initials are used to protect the individuals' identities.

B. Documentary Evidence of Mother's U.S. Physical Presence Prior to the Applicant's Birth

The documentary evidence contained in the record also does not support claims that the Applicant's mother was physically present in the United States for 10 years prior to the Applicant's birth in 1970, at least five years of which occurred after she turned 14 in 1962.

His mother's birth certificate indicates U.S. physical presence at the time of her birth in 1948. The record also contains his mother's baptism certificate, reflecting that she was baptized in Texas in August 1948. While this evidence could be sufficient to establish his mother's physical presence in the United States for about months between and August 1948, it does not demonstrate that his mother remained in the United States after August 1948. Similarly, although his mother's marriage certificate shows that she married the Applicant's father in Texas in 1966, 18 years after her birth, it does not demonstrate that she was physically present in the United States between August 1948 and 1966.

The Applicant's brother's U.S. birth registration, passport, and baptism certificate contain his mother's name and indicate that the Applicant's mother was physically present in the United States in 1967, when the brother was born, and in November 1967, when his brother was baptized. This evidence shows the Applicant's mother was physically present in the United States for months in 1967.

The Applicant asserts that his Form I-181, Memorandum of Creation of Record of Lawful Permanent Residence further establishes that his mother resided permanently in the United States prior to his birth in 1970. Specifically, he contends that the Form I-181 reflects he was admitted into the United States in July 1970 pursuant to 8 C.F.R. § 211.1(a)(2) (1970) The Applicant submits a copy of this regulation, as in effect in 1971, which reflects the circumstances under which a child born outside of the United States during a temporary visit abroad by the U.S. national mother may be admitted into the country without a valid visa. The Applicant contends that because he was admitted into the country under 8 C.F.R. § 211.1(a)(2), the immigration service made a specific finding that his mother was returning to the United States from *a temporary visit* abroad. The Applicant's Mexican birth certificate also indicates that his mother and father were domiciled in Texas when the Applicant was born in 1970. While this evidence indicates that the Applicant's mother was domiciled in the United States prior to the Applicant's birth, it does not reflect when this domicile began, or how long she was physically present in the United States prior to the Applicant's birth in 1970.

The Applicant provides no evidence such as residence, utility, school, employment, medical or other documentary evidence to corroborate claims that his mother was physically present in the United States for 10 years prior to his birth in 1970, at least five of those years being after her 14th birthday in 1962. At best, the documentary evidence in the record shows that his mother was physically present in the country for up to months in 1948, up to a month in 1966 when she married, and up to months after the Applicant's brother's birth in 1967. In addition, even if we accepted that the Applicant's mother was continuously physically present in the United States after her marriage in

1966 until the Applicant's birth in 1970, this would amount to only about four years of physical presence in the United States prior to the Applicant's birth.

III. CONCLUSION

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 establish that his mother was physically present in the United States for 10 years prior to his birth in 1970, at least five years of which were after his mother turned 14 in 1962, as required under former section 301(a)(7) of the Act.

ORDER: The appeal is dismissed.

Cite as *Matter of R-S-H-*, ID# 439938 (AAO July 27, 2017)