U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF S-N-B-

DATE: NOV. 3, 2017

APPEAL OF HOUSTON, TEXAS FIELD OFFICE DECISION

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

The Applicant, who was born in India to a U.S. citizen father and a foreign national mother in 1984, seeks a Certificate of Citizenship. *See* Immigration and Nationality Act (the Act) section 301(g), 8 U.S.C. § 1401(g), *amended by* Act of November 14, 1986, Pub. L. No. 99-653, 100 Stat. 3655. 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. An individual born abroad between December 24, 1952, and November 14, 1986, who is claiming acquisition of U.S. citizenship at birth through a U.S. citizen father, must establish that the father was 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. If the individual was born to an unmarried U.S. citizen father, he or she must also satisfy applicable legitimation requirements.

The Director of the Houston, Texas, Field Office denied the application concluding that the Applicant did not establish he acquired U.S. citizenship at birth from his father because he did not submit a copy of his parents' marriage certificate to show that he was born in wedlock.

On appeal, the Applicant asserts that the Director's decision was in error because the parents' Indian divorce decree he provided constitutes sufficient evidence that they were validly married under Indian law prior to his birth and, thus, that he was born in wedlock.

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

I. LAW

As stated above, the Applicant was born in 1984 in India. His mother is a citizen of India. His father was born in India in 1942, but obtained U.S. citizenship through naturalization in 1978, before the Applicant's birth.

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 statute in effect at the time of the Applicant's birth in 1984 was former section 301(g) of the Act, 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 . . . .

Unless a child claiming citizenship through a U.S. citizen father was born in wedlock, he or she must also satisfy legitimation requirements of section 309(a) of the Act, 8 U.S.C. § 1409(a), *amended by* Act of November 14, 1986, Pub. L. No. 99-653, 100 Stat. 3655, to acquire U.S. citizenship from the father.

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. *Matter of Baires-Larios*, 24 I&N Dec. 467, 468 (BIA 2008). Under the preponderance of the evidence standard, the Applicant must demonstrate that his citizenship claim is "probably true." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). We will 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 facts to be proven are probably true.

II. ANALYSIS

There is no dispute that the Applicant was born in 1984 to a U.S. citizen father. The Applicant's timely-registered birth certificate identifies his father by name, and the Applicant has submitted evidence that his father was naturalized by a U.S. district court in 1978.

The issue before us, therefore, is whether the Applicant has established that he was born in wedlock or, if not, whether he satisfies the applicable legitimation provisions of section 309(a) of the Act. If the Applicant establishes that he meets either of these threshold conditions, we will then consider whether his father met the U.S. physical presence requirements to transmit U.S. citizenship.

The Applicant represented on his Form N-600, Application for Certificate of Citizenship, that he was born to married parents. In support, he initially submitted a copy of his parents' Indian court divorce decree, which referenced their 1983 marriage. The Director issued a request for evidence (RFE) asking the Applicant to submit, in part, his parents' marriage certificate. In his response to the RFE, the Applicant explained that despite his best efforts he was not able to obtain the certificate from the relevant marriage registry in India due to bureaucracy and lack of centralized electronic records. Instead, he provided: three affidavits from individuals who attested to their attendance at the parents' marriage ceremony in India; a copy of the wedding invitation; and several photographs from the wedding ceremony.

The Director found that this evidence insufficient to show that the Applicant's parents were married prior to his birth in view of the fact that, according to the U.S. Department of State reciprocity schedule for India, certificates of marriages that were registered under the Hindu Marriage Act of 1955 can be obtained from an appropriate marriage registry.

The Applicant asserts on appeal that he satisfied his burden of proof in these proceedings, because he has demonstrated that he could not obtain the marriage certificate and submitted relevant secondary evidence which shows that his parents were in fact married in 1983.

We agree the Applicant has demonstrated by a preponderance of probative and credible evidence that he was born in wedlock, and that he is therefore not subject to the legitimation provisions of section 309(a) of the Act. Moreover, we find the documents in the record sufficient to establish that the Applicant's father satisfied the 10-year physical presence requirement of former section 301(g) of the Act for transmission of U.S. citizenship.

A. Marriage of the Applicant's Parents

Although the Applicant has not submitted a copy of his parents' marriage certificate, the secondary evidence he provided shows that his parents were more likely than not married in June 1983, as he claims.

The Department of Homeland Security regulations allow submission of secondary evidence if an applicant demonstrates that despite repeated good faith attempts he or she was not able to obtain the necessary document from the relevant foreign authority. 8 C.F.R. § 103.2(b)(2)(i)-(ii). Here, the Applicant has previously submitted evidence indicating that although the attorney he hired manually searched for a copy of the marriage certificate in the relevant Indian marriage registry records several times over a four-month period, the certificate could not be located.[1] In absence of the marriage certificate, we consider other relevant documents to determine whether the parents were married. These documents include a certified copy of the divorce judgment issued by a family court in India in [redacted] 1990. The judgment states, in pertinent part, that the Applicant's parents "got married with each other as per Hindu rites and ceremonies" in [redacted] 1983, and that they lived together for almost three weeks after the marriage, until the Applicant's father left India to return to the United States. The judgment states further that the custody of the Applicant was awarded to his mother and that his father was ordered to pay child support. We find that the divorce judgment, which also provides a detailed account of the circumstances of the marriage and the events that led to its subsequent dissolution, is in itself evidence that the parents were married in India prior to the Applicant's birth in [redacted] 1984, and that their marriage was recognized as valid under Indian law. In addition, the Applicant has submitted three affidavits from individuals who attended the parents' wedding in India, and who attest that the parents were married in 1983 in a Hindu ceremony. A

[1] Moreover, according to the U.S. Department of State, registration of all marriages is voluntary. Thus a copy of the marriage certificate may not be available if the marriage was not registered. *See India Reciprocity Schedule, Marriage, Divorce Certificates*, https://travel.state.gov/content/visas/en/fees/reciprocity-by-country/IN.html.

copy of the [redacted] 1983 parents' wedding invitation, the photographs from the marriage ceremony, and the father's August 1983 real estate sale documents, which specifically reference his marriage to the Applicant's mother, further support the Applicant's claim of his parents' marriage.

Based on this evidence, we conclude the Applicant has established that he was born in wedlock, and, thus, that the additional legitimation requirements in section 309(a) of the Act do not apply in his case. Accordingly, we will next consider whether the Applicant's father had sufficient physical presence in the United States to transmit his U.S. citizenship to the Applicant.

B. Physical Presence

As discussed above, to establish acquisition of U.S. citizenship from his father under former section 301(g) of the Act, the Applicant must also show that his father was physically present in the United States for at least 10 years before the Applicant's birth in [redacted] 1984, and that 5 of those years were after the father's 14th birthday in [redacted] 1956. The evidence is sufficient to show that the Applicant's father satisfies these requirements.

The Applicant has submitted multiple documents relating to the father's real estate transactions in the United States dated from September 1975[2] through February 1984. All of these documents, which were signed by the Applicant's father and notarized, indicate that he was a Louisiana resident during that time period. Moreover, U.S. Citizenship and Immigration Services records show that the Applicant's father was admitted to the United States for permanent residence in September 1970, and that at the time of his naturalization in 1978 he claimed only two short absences from the United States since then.

In view of the above, we find that the Applicant has demonstrated that he was born to a married U.S. citizen father who was physically present in the United States for at least 10 years before the Applicant's birth, 5 of which were after the father's 14th birthday, as required to establish acquisition of U.S. citizenship at birth under former section 301(g) of the Act.

III. CONCLUSION

The Applicant has established that he satisfied the applicable statutory requirements to acquire U.S. citizenship at birth from his father. The Applicant is therefore eligible for a Certificate of Citizenship.

[2] Although the Applicant's father did not naturalize as a U.S. citizen until 1978, for the purposes of transmission of U.S. citizenship under section 301(g) of the Act, we consider his physical presence in the United States before and after naturalization. *See generally Matter of M-*, 7 I&N Dec. 643 (Reg'l Comm'r 1958).

ORDER: The appeal is sustained.

Cite as *Matter of S-N-B-*, ID# 651681 (AAO Nov. 3, 2017)