U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF O-E-Y-

DATE: JAN. 12, 2018

APPEAL OF YAKIMA, WASHINGTON FIELD OFFICE DECISION

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

The Applicant, who was born in Mexico in 1958, seeks a Certificate of Citizenship indicating that he acquired U.S. citizenship at birth through his claimed 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); section 309(a), 8 U.S.C. § 1409(a), (*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. For an individual claiming to be a U.S. citizen at birth, who was born to unmarried parents between December 24, 1952, and November 14, 1986, and is claiming citizenship through a U.S. citizen father, the father 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 and the individual must also satisfy legitimation requirements.

The Director of the Yakima, Washington, Field Office denied the application, concluding that the Applicant's claimed father stated in a sworn statement that the Applicant was not his biological child, and that the Applicant submitted insufficient evidence to demonstrate he was born to a U.S. citizen parent, as required.[1]

The Applicant submitted no new evidence on appeal. He claimed, however, that his birth certificate shows that (C-E-Y-), a U.S. citizen who is now deceased, was his biological father. He questioned the existence of C-E-Y-'s sworn statement and asked to see it. In the event that C-E-Y's statement exists, he asserted that he and C-E-Y- resembled each other, he has always

[1] The Director stated that the Applicant's mother became a U.S. citizen in 1996, when the Applicant was 37 years old. The Director determined the Applicant was ineligible to derive U.S. citizenship through his mother under former section 321 of the Act, 8 U.S.C. § 1432 (*repealed by* Sec. 103(a), title I, Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631 (2000)), because the provision required amongst other things, that prior to his 18th birthday one or both parents became naturalized citizens and he resided in the United States pursuant to a lawful admission. The Director also found that the Applicant did not qualify for derivative citizenship under section 320 of the current Act, 8 U.S.C. § 1431, because, amongst other things, the provision applies only to individuals who were not yet 18 years old as of February 27, 2001. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). The Applicant does not contest these findings on appeal, and we agree with these determinations.

believed that he was C-E-Y-'s biological child, and that C-E-Y- must have denied paternity out of anger towards his mother.

We sent a notice of intent to dismiss to the Applicant, providing him with C-E-Y-'s sworn statement and his mother's similar sworn statement, both of which were contained in the Applicant's immigration file. We informed the Applicant of our intent to dismiss his case, and provided him with an additional 33 days to submit evidence to establish his claims. More than 33 days have passed and the Applicant has submitted no response or additional evidence. Upon *de novo* review, we will dismiss the appeal.

I. LAW

The record reflects that the Applicant was born out of wedlock in Mexico on [redacted] 1958. His mother was a foreign national at the time of his birth. He claims that his father was a U.S. citizen, and asserts further that his mother and father married in Mexico in [redacted] 1958.

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 year of birth in 1958, his 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 out of wedlock, he must also satisfy the requirements of section 309(a) of the Act, which pertain to legitimation. Former section 309(a) of the Act, which is applicable to the Applicant, required paternity of a child to be established by legitimation while the child was under the age of 21.

In addition, 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 issue in this case is whether the Applicant provided sufficient evidence to establish that he was born to a U.S. citizen father, as required under former section 301(a)(7) of the Act.[2] Although we have considered the assertions made on appeal, we agree with the Director that the Applicant has not established the biological relationship between himself and his claimed father.

The Applicant asserts that his birth certificate demonstrates that C-E-Y- (who he claims is a U.S. citizen) is his biological father.[3] In support, he submits an affidavit from his younger sister stating that C-E-Y- is the Applicant's father; however, the affidavit has limited evidentiary weight because the sister was born two years after the Applicant and has no personal knowledge of the circumstances of his birth. *See Matter of E-M-*, 20 I&N Dec. 77 (Comm'r. 1989) (In ascertaining the evidentiary weight of affidavits, the Service must determine the basis for the affiant's knowledge of the information to which she or he is attesting; and whether the statement is plausible, credible, and consistent both internally and with the other evidence of record.).

The record contains the Applicant's Mexican birth certificate listing C-E-Y- as his father, but this document also has limited probative value. First, the English language translation appears to be incomplete in that unlike the Spanish original, it is not written in a paragraph format, and it appears to contain less information. In addition, the birth certificate was registered four months after the Applicant's birth and a day after his mother married C-E-Y-, and the paternity information directly conflicts with sworn statements from C-E-Y- and the Applicant's mother (dated in January 1964) specifically stating that C-E-Y- is not the Applicant's biological father. *See Matter of Bueno-Almonte*, 21 I&N Dec. 1029, 1033 (BIA 1997) (A delayed birth certificate must be evaluated in light of other evidence in the record and in light of the circumstances of the case); and *Matter of Serna*, 16 I&N Dec. 643 (BIA 1978) (The evidentiary value given to a delayed birth certificate is rebutted by contradictory evidence, and each case must be decided on its own facts with regard to the sufficiency of the evidence presented as to the individual's birth.).

The Applicant must resolve the inconsistencies as to his paternity by 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 he submits competent objective evidence pointing to where the truth lies. *Id.* Here, the record contains insufficient evidence to resolve the inconsistencies. The affidavit from his sister, and the Applicant's assertions that he resembled C-E-Y-, always believed he was C-E-Y's child, and that C-E-Y-'s statement must have been made out of anger towards his mother, do not constitute independent objective evidence of the biological

[2] The Applicant does not contest that his mother was a foreign national when he was born.

[3] The Applicant did not provide a U.S. birth certificate, a Certificate of Citizenship, or a Certificate of Naturalization to show that C-E-Y- was a U.S. citizen, nor is there sufficient evidence to show that C-E-Y- was physically present in the United States prior to the Applicant's birth, as required. However, we shall not further address these issues because, as discussed, we find that the Applicant has not shown that C-E-Y- is his biological father.

relationship. Nor do they explain why the Applicant's mother would confirm C-E-Y's statements denying paternity.

Because the Applicant has submitted no other evidence to resolve the inconsistencies or to establish that he was born to a U.S. citizen father, he has not met his burden of proof of establishing his claim to U.S. citizenship.

III. CONCLUSION

The Applicant has provided insufficient evidence to demonstrate that C-E-Y- is his biological father. Accordingly, he has not established that he acquired U.S. citizenship at birth through a U.S. citizen father under former section 301(a)(7) of the Act.

ORDER: The appeal is dismissed.

Cite as *Matter of O-E-Y-*, ID# 599290 (AAO Jan. 12, 2018)