U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF M-M-W-

DATE: JAN. 23, 2018

APPEAL OF PHOENIX, ARIZONA FIELD OFFICE DECISION

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

The Applicant, who was born in Canada in 1930, seeks a Certificate of Citizenship indicating that she acquired U.S. citizenship at birth from her father. *See* Section 1 of the Act of February 10, 1855, 10 Stat. 604, which was incorporated into section 1993 of the Revised Statutes of the United States, 1878 (the Revised Statutes), and accorded U.S. citizenship to children born abroad to a U.S. citizen father who had resided in the United States.

The Director of the Phoenix, Arizona Field Office denied the Form N-600, Application for Certificate of Citizenship, concluding that the Applicant provided insufficient evidence to demonstrate that her father was a U.S. citizen, or that he was present in the United States prior to her birth, as required.[1]

On appeal, the Applicant submits additional evidence, and claims that the record sufficiently establishes her father's birth in the United States, and her eligibility to acquire U.S. citizenship through her father.

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

I. LAW

The record reflects that the Applicant was born in Canada on [redacted] 1930, to married parents. Her mother was a foreign national. The Applicant claims that her father was a U.S. citizen.

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 birth in 1930, her claim falls within the provisions of

[1] The Director erroneously references section 301(g) of the Act, 8 U.S.C. § 1401(g) citizenship requirements. The Applicant also refers to eligibility under section 301(g) of the Act. The errors do not affect our adjudication on appeal, as we are reviewing the matter *de novo*.

section 1 of the Act of February 10, 1855, as incorporated into section 1993 of the Revised Statutes, which stated that:

> All children heretofore born or hereafter born out of the limits and jurisdiction of the United States, whose fathers were or may be at the time of their birth citizens thereof, are declared to be citizens of the United States; but the rights of citizenship shall not descend to children whose fathers never resided in the United States.[2]

Because the Applicant was born abroad, she is presumed to be a foreign national and bears the burden of establishing her 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 her 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 issues in this case are whether the Applicant provided sufficient evidence to demonstrate that her father was a U.S. citizen at the time of her birth in [redacted] 1930, and that he resided in the United States before she was born.

The Applicant indicates on appeal that, although she does not have a birth certificate for her father, other evidence sufficiently establishes his birth in the United States, and her eligibility to acquire U.S. citizenship through him. In support, the Applicant submits [redacted] North Dakota family history book information, and U.S. and Canadian Census documentation. Previously submitted evidence also includes her parents' marriage certificate, the Applicant's birth certificate, a letter from the North Dakota vital records division, and general family record information.

We find, upon review, that the record now demonstrates by a preponderance of the evidence, that the Applicant's father was born a U.S. citizen, and that he resided in the United States prior to the Applicant's birth, as required.

A. U.S. Citizen Parent

The Applicant asserts that her father was born in North Dakota on [redacted] 1907; however, she does not have a birth certificate to establish her claim. Instead, the Applicant submits evidence that she requested her father's birth certificate from the North Dakota Department of Health Vital Records Division, and a response letter stating that they were unable to locate the father's birth record. The vital records division clarifies further, in their response, that birth registration became law in North Dakota in 1893, the law was repealed and subsequently re-enacted in 1899, that registration was

[2] Child retention requirements that were later added by the Act of May 24, 1934, Pub. L. 73-250, 48 Stat. 797, do not apply to the Applicant, who was born in 1930.

poorly done in the early years, and that many birth records were never filed. They also state that there are few birth records prior to 1900 and in the early 1900s, and that it was not until about the 1920s that birth registration became 90 percent complete.

The Applicant also submits, on appeal, a letter from the county recorder and district court clerk in [redacted] North Dakota, verifying that the Applicant's father's name and date of birth in [redacted] 1907 are listed in the county family history book. In addition, the record now contains a 1910 U.S. Census record, reflecting that the Applicant's father lived in North Dakota with his family when he was three years old, and listing the father's birth place as North Dakota. The record also contains other evidence representing that the Applicant's father was born in the United States. For example, new 1911 and 1916 Canadian census records list the Applicant's father's birthplace as the United States. Her father's 1928 Canadian marriage certificate and the Applicant's 1930 Canadian birth certificate also state that he was born in the United States.

The cumulative evidence in the record sufficiently establishes that the Applicant's father was born in North Dakota, and that he was a United States citizen at the time of the Applicant's birth.

B. Residence in the United States

The evidence also demonstrates that the Applicant's U.S. citizen father met section 1993 of the Revised Statutes residence requirements prior to her birth.

The Revised Statutes did not define the term "residence." However, the requirement has been interpreted broadly and has been read to even include temporary visits to the United States. *See Matter of V-*, 6 I&N Dec. 1 (A.G. 1954) (two visits to the United States by a United States citizen parent prior to the birth of her children, one for two days and the other for a few hours, were held to satisfy the residence requirement). Here, the documents discussed above reflect that her father was born in North Dakota in 1907 and that he lived with his family in the United States when he was three years old. This amount of U.S. presence is sufficient to satisfy section 1993 of the Revised Statutes U.S. residence requirements.

III. CONCLUSION

The Applicant has provided sufficient evidence to demonstrate that her father was a U.S. citizen and that he resided in the United States prior to her birth. Accordingly, she has established that she acquired U.S. citizenship at birth through her father under section 1993 of the Revised Statutes.

ORDER: The appeal is sustained.

Cite as *Matter of M-M-W-*, ID# 822549 (AAO Jan. 23, 2018)