U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

MATTER OF C-T-O-

DATE: JAN. 25, 2018

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Applicant, who was born in Mexico in 1960, seeks a Certificate of Citizenship indicating he acquired 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 Saint Paul, Minnesota Field Office denied the application, concluding the record contained insufficient evidence to establish that prior to his birth, his father was physically present in the United States for the period required for transmission of citizenship. We dismissed the matter on appeal on similar grounds, and denied three subsequent motions to reconsider.

The matter is now before us on a fourth motion to reconsider. The Applicant submits additional evidence and indicates that the record shows his father complied with requirements for an ineffective assistance of counsel claim, that this resolves inconsistencies in U.S. physical presence statements made by his father, and that the evidence in the record sufficiently establishes that his father met former section 301(a)(7) of the Act U.S. physical presence requirements prior to his birth.

We will deny this fourth motion to reconsider.

## I. LAW

A motion to reconsider must establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). The motion to reconsider must be supported by a pertinent precedent or adopted decision, statutory or regulatory provision, or statement of U.S. Citizenship and Immigration Services (USCIS) or Department of Homeland Security policy.

## II. ANALYSIS

The issue on motion is whether the Applicant has established that our previous decision was incorrect based on an incorrect application of law or USCIS policy. We find he has not.

In his previous (and third) motion, the Applicant asserted that his father was taking steps to begin an ineffective assistance of counsel claim against the attorneys that represented him for Form N-600 and immigrant visa purposes, in accordance with procedures set forth in *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988). He claimed, however, that due to the passage of time one of the attorneys was now deceased, and he was unable to locate the other. He indicated that the affidavits in the record therefore resolved his father's prior inconsistent statements,[1] and that the record sufficiently established his eligibility for citizenship through his father. In our denial, we determined that the Applicant did not provide evidence of his father's compliance with all *Lozada* ineffective assistance of counsel claim requirements; that even if the father had complied with *Lozada* requirements against the clinic who helped with his Form N-600 (which he did not), he did not demonstrate that the alleged attorney who helped with his immigrant visa application several years earlier similarly advised him to leave out pre-1981 U.S. physical presence information; and ultimately, he did not establish any legal error in our prior decision.

In this fourth motion to reconsider, the Applicant submits evidence that his father has formally filed grievances against two (deceased) attorneys. He indicates, on this basis, that the record establishes sufficient compliance with *Lozada* ineffective assistance of counsel requirements to resolve inconsistencies in his father's statements, and he reasserts that the evidence in the record sufficiently establishes that his father met the U.S. physical presence requirements set forth in former section 301(a)(7) of the Act. The Applicant has not, however, claimed or identified an incorrect application of law or policy in our previous decision based on the evidence in the record of proceedings at the time of the decision, as this evidence was submitted after that decision. Nor has he cited to any precedent legal decisions, authority, or policy demonstrating that our prior decision was legally incorrect. *See* 8 C.F.R. § 103.5(a)(3).[2]

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[1] In his immigrant visa application and his own Form N-600, the Applicant's father stated he had never been in the United States before 1981, which was *after* the Applicant's 1960 birth. In contrast, for the Applicant's Form N-600, the father claimed he was physically present in the United States for 10 years *before* the Applicant was born.

[2] The Applicant also did not establish that his father satisfied *Lozada* conditions which states, in pertinent part:

> A motion to reopen or reconsider based upon a claim of ineffective assistance of counsel requires (1) that the motion be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard, (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond, and (3) that the motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not.

*Matter of Lozada*, *supra*, at 637.

## III. CONCLUSION

The Applicant has not established that our prior decision was incorrect as a matter of law or policy or that he acquired U.S. citizenship at birth through his father under former section 301(a)(7) of the Act.

**ORDER:** The motion to reconsider is denied.

Cite as *Matter of C-T-O-*, ID# 849680 (AAO Jan. 25, 2018)