U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF L-L-H-K-

DATE: JUNE 11, 2018

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Applicant, who was born Mexico in 1977, seeks a Certificate of Citizenship indicating that she acquired U.S. citizenship at birth from her mother. Immigration and Nationality Act (the Act) section 309(c), 8 U.S.C. § 1409(c). To establish acquisition of citizenship at birth under this section, an individual who was born after December 23, 1952, must show that his or her U.S. citizen mother was unmarried at the time, and that she was physically present in the United States for one continuous year before the individual's birth.

The Director of the El Paso, Texas Field Office denied the application, concluding that the evidence was insufficient to demonstrate that the Applicant was born out of wedlock, or that her U.S. citizen mother was physically present in the United States for one continuous year before the Applicant's birth. We dismissed the appeal on the same basis, finding that the preponderance of the evidence in the record, including birth and baptismal certificates of the Applicant's older sister and an affidavit from the mother's acquaintance, did not support the Applicant's U.S. citizenship claim.

On a motion to reopen and reconsider, the Applicant submits another document related to her sister's baptism, as well as an updated affidavit, and states that evidence to show that her parents were never married will be forthcoming. However, as we have not received additional documentation or correspondence from the Applicant, we will consider the record complete.

Upon review, we will deny the motion.

I. LAW

A motion to reconsider is based on an *incorrect application of law or policy*, and a motion to reopen is based on documentary evidence of *new facts*. The requirements of a motion to reconsider are located at 8 C.F.R. § 103.5(a)(3), and the requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

II. ANALYSIS

The issues before us are whether the Applicant has established that our previous decision was erroneous as a matter of law or U.S. Citizenship and Immigration Services (USCIS) policy, or if she has presented new facts and evidence that would cause us to reexamine our finding that she did not demonstrate acquisition of U.S. citizenship at birth from her mother.

We have again reviewed the record, and find that the additional evidence the Applicant offers on motion is insufficient to reopen these proceedings and to reconsider our previous determination that she did not establish acquisition of U.S. citizenship at birth.

As stated above, to prevail on her citizenship claim, the Applicant must show that she was born out of wedlock, and that her mother had at least one year of continuous physical presence in the United States prior to her birth in 1977. We have previously concluded that the Applicant did not show her mother met these requirements. First, the evidence indicated that the mother may have been married, as both parents' names appear on the Applicant's and her sister's birth records, and the Applicant did not provide documentation to support her claim that each of her parents was in fact single when she was born. Second, we found that although the acquaintance's affidavit and the sister's birth and baptismal records demonstrated that the mother was likely in the United States for some time between February and June 1976, they did not show, without more, that she was physically present in the United States for one full, continuous year before the Applicant's birth in Mexico in July 1977. We further explained that the acquaintance's affidavit attesting to the residence of the Applicant's parents in California from January 1975 through 1977 had limited evidentiary value, because it did not include their address and specific dates of their physical presence in that state, and the Applicant did not provide either parent's medical, employment, or financial records to corroborate the affiant's claims.

The Applicant now submits an updated affidavit from the same individual, who adds that she lived in California from 1969 through 2011, and that she and the Applicant's mother are related. However, she does not offer any new information about her address then or the specific time periods of the parents' presence in California, repeating only her previous claims that they lived at her house from January 1975 until 1977, and had a daughter born in [redacted] 1976. Just like her previous affidavit, the affiant's statements submitted on motion do not include sufficient probative details to determine whether during this timeframe the Applicant's mother was physically present in the United States for one continuous year. Moreover, the fact that the Applicant's parents were in Texas in June 1976 for the baptism of her older sister diminishes the weight of the affiant's claim that they lived with her California from 1975 until the mother returned to Mexico some time in 1977. Neither the affiant nor the Applicant explain why the mother traveled from California to Texas to baptize her child, how long she remained there, where she lived, and whether she subsequently returned to California. The additional evidence showing that the mother attended pre-baptismal instructions at a Texas church on [redacted] 1976, does not demonstrate the mother's continuous one-year of physical presence in the United States; rather, it is merely consistent with our previous finding that she was likely present in the United States from the time her first child was born in [redacted] 1976, until the

child's baptism in mid-June of the same year. As the Applicant also does not provide documents to demonstrate that she was born out of wedlock, we must conclude that she has not established she met the requirements for acquisition of U.S. citizenship at birth under section 309(c) of the Act. Lastly, she does not identify any pertinent precedent or adopted decisions, statutory, regulatory, or other provisions to show that our prior decision was based on an incorrect application of law or USCIS policy.

III. CONCLUSION

We have previously determined that the Applicant did not demonstrate she acquired U.S. citizenship at birth from her mother, because the evidence she submitted was insufficient to show that her mother was unmarried at the time, or that she was physically present in the United States for one continuous year before the Applicant's birth. The instant motion does not overcome our prior determination of the Applicant's ineligibility for a Certificate of Citizenship and our decision to dismiss the appeal will remain undisturbed.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of L-L-H-K-*, ID# 1493451 (AAO June 11, 2018)