U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22046300

Date: AUG. 26, 2022

Motion on Administrative Appeals Office Decision

Form N-600, Application for Certificate of Citizenship

The Applicant seeks a Certificate of Citizenship to reflect that he derived U.S. citizenship from his U.S. citizen father under former section 301(a)(7) of the Act, 8 U.S.C. §1401(a)(7) (1961).

The Director of the Portland, Oregon Field Office denied the application, concluding the Applicant did not show that his father had resided in the United States for at least five years, no less than two of which were after the age of 14 years, and therefore was not eligible for a Certificate of Citizenship under former section 301(a)(7) of the Act. The Director also concluded that the Applicant had not shown that he was eligible for a Certificate of Citizenship under sections 309, 321, 320, and 322 of the Act. In our decision on appeal, which we incorporate herein, we concluded that the Applicant had not provided sufficient evidence to show that he satisfied the former section 301(a)(7) of the Act condition that his father was a U.S. citizen at the time of the Applicant's birth. We reserved the issue as to whether the Applicant had shown that his father had satisfied the physical presence conditions at former section 301(a)(7) of the Act. Moreover, based on inconsistent evidence, we concluded that the Applicant had not demonstrated that he was born in wedlock as claimed, and therefore he needed to satisfy the legitimation requirements at section 309(a) of the Act. In our decision on motion to reconsider, which we also incorporate herein, we concluded that the Applicant provided sufficient evidence on motion to show that his father was a U.S. citizen as of the Applicant's birth in 1974, and that the Applicant was born in wedlock. However, we further concluded that the Applicant had not established that his father has the requisite physical presence in the United States required for transmission of citizenship under former section 301(a)(7) of the Act, thus he could not demonstrate that he acquired U.S. citizenship at birth from his father.

The record reflects that the Applicant was born in [redacted] 1974 in Mexico, his father was a U.S. citizen based on his birth in California in 1948, and his mother was a citizen of Mexico when the Applicant was born. The Applicant provided a Certificate of Naturalization showing that his mother became a naturalized U.S. citizen in 2013 (after he turned 18 years old); therefore, he seeks to establish his U.S. citizenship at birth solely through his U.S. citizen 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. *Baires* at 468. 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).

The Applicant has now filed a motion to reopen[1] our decision dismissing his motion to reconsider, and includes additional evidence. A motion to reopen must state new facts and be supported by affidavits or other documentary evidence. 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. Upon review, we will dismiss the motion.

II. ANALYSIS

In our prior decision dismissing the Applicant's motion, incorporated here by reference, we determined that the Applicant had not submitted sufficient evidence to corroborate claims of his father's residence (both before the age of 11 and after the age of 14 years), trips, and employment within the United States. First, in his statement, the Applicant's father did not include probative details or supporting evidence about the period before 1959 (before the age of 14 years) to support his claim to have been physically present in the United States for nearly eleven years after he was born. The Applicant also did not provide corroborating evidence, such as elementary school transcripts, statements from friends, churches, or other organizations to support his father's claim to have been physically present in the United States from birth through age eleven. Then, while the Applicant claimed that his parents' statements were sufficient to show that his father had the requisite physical presence in the United States after the age of 14 years, the Applicant's father did not provide corroborating evidence, such as bank statements, mortgages, leases, tax returns, or affidavits from former co-workers to support his claim to have been physically present and working off the books in the United States from 1971 to 1974. Further, the Applicant's father's social security statement submitted was not sufficient to show that his father had at least five years of physical presence in the United States during the relevant period after he turned 14 years of age based on his work history. Moreover, we indicated the Applicant's mother's statements did not reflect personal knowledge about some of the claimed physical presence periods. Her statement regarding the periods of time when her husband did not live with her in Mexico did not contain sufficient details about where he actually was living and what he was doing, and it was not accompanied by corroborating evidence to meet the Applicant's burden of proof in this matter. Thus, we agreed with the Director that the Applicant had not provided sufficient evidence to show that his father had at least ten years of physical presence in the United States, including five years after he turned 14 years of age and before the Applicant's birth in 1974, as required under former section 301(a)(7) of the Act.

On motion to reopen, the Applicant contends, through counsel, that he has established by a preponderance of the evidence, that it is "probably true [the Applicant's father, J-F-H-] was physically present in the U.S. for 10-11 years before he turned 14 and for [seven] years after he turned 14 on [redacted] 1962 and prior to the birth of [the Applicant] on [redacted] 1974." Counsel indicates that the newly submitted statements from the Applicant, J-F-H-, his mother, and J-F-H-'s cousin provide clarification as to the time periods J-F-H- was in the United States and his inability to collect additional corroborating evidence.

[1] The Applicant checked the box at part 2 of the Form I-290B, Notice of Appeal or Motion, indicating that he was filing an appeal to the AAO and listed his previous motion to reconsider to the AAO as the decision subject to his filing. However, given that we do not have jurisdiction over appeals of our decisions and that the Applicant listed our previous decision on motion and submitted new evidence with this filing, we will treat this filing as a motion to reopen our previous motion decision.

A. Evidence of Father's Physical Presence in the United States Before the Age of 14 Years

On motion, the Applicant submits an elementary school class picture of J-F-H- for the 1956-1957 school year at [redacted] School in [redacted] California, a current photo of J-F-H- standing inside the referenced elementary school, a current photo of J-F-H- standing outside a home, and a copy of J-F-H-'s California Identification Card issued on November 23, 1971.

In his statement on motion, the Applicant indicates that in October 2018, he traveled to [redacted] Elementary School in [redacted] California with J-F-H- to obtain school records pertaining to the time J-F-H- attended school there but were advised by the principal that school records were only retained for 10 years and J-F-H-'s records were no longer available. He also states that they visited the house J-F-H- grew up in as a child, and included a photo of J-F-H- standing in front of that house.

In his statement on motion, J-F-H- indicates that he and his brothers attended [redacted] Elementary School from kindergarten to fourth grade, including the years prior to his adoption. He indicates that in October 2018, he traveled to [redacted] Elementary School in [redacted] California with the Applicant to obtain school records pertaining to the time he attended school there but was advised by the school director that school records were only retained for 10 years and his records were no longer available. He also states that they visited the house he grew up in as a child, and included a photo of himself standing in front of that house.

In a statement, A-C-, J-F-H-'s cousin, indicates that in 1957 she traveled to the United States and stayed with her aunt and uncle, J-F-H-'s adoptive parents, in the United States. She states that, upon her arrival, her aunt and uncle informed her that they had adopted J-F-H- (along with two of his brothers) and he was also residing in the home. She states that she "remember[s] that all three children were attending school regularly [in [redacted]] . . . for the year [she] was living with them in the United States." She recalls that she stayed at their home for about one year during 1957-1958 and that the house had "steps in the front entrance and it was always very windy." She states that she knows J-F-H- lived in the United States for at least five years before he was 14 because he was born in the United States and she resided with them for one entire year, and she states that J-F-H- was taken to Mexico by his adoptive parents approximately one year after she returned to Mexico.

In ascertaining the evidentiary weight of an affidavit we must determine the basis for the affiant's knowledge of the information to which she is attesting; and whether the statement is plausible, credible, and consistent both internally and with the other evidence of record. *See Matter of E-M-*, 20 I&N Dec. 77 (Comm. 1989). First, while we recognize that the Applicant was unable to obtain J-F-H-'s elementary school records as they are no longer available, he still has not submitted sufficient evidence, on motion, to demonstrate that J-F-H- was physically present in the United States from his time of birth through 1959, as claimed. The purported elementary school class picture of J-F-H- for the 1956-1957 school year at [redacted] Elementary School does not include the names of the students pictured. While the Applicant has himself identified which student is J-F-H-, this is not sufficient to demonstrate that J-F-H- attended this school at that time, let alone from kindergarten to fourth grade. The current photo of J-F-H- purportedly standing inside the referenced elementary school also does not corroborate this claim. The photo appears to have been taken inside of a school cafeteria and does not include any signage or other reference to confirm its location.

Regardless, this photo is also not sufficient to demonstrate that J-F-H- attended the referenced school at that time. Further, the current photo of J-F-H- standing outside a home also does not include any signage or other reference to confirm its location. A-C-'s statement, provided on motion, indicates that she was present in the United States at J-F-H-'s home and witnessed J-F-H- attending school in [redacted] on a regular basis, for a one-year period during 1957-1958. However, while she claims to know that J-F-H- was physically present in the United States for at least five years before he was 14 because he was born in the United States, her statement claims to only have witnessed a single year of physical presence in the United States prior to the age of 14. Consequently, the record is not sufficient to show that the Applicant had more than one year of physical presence in the United States until 1959, as claimed.

B. Evidence of Father's Physical Presence in the United States After the Age of 14 Years

In his statement on motion, J-F-H- recalls that he "was employed by [M-V-] doing woodworking in [redacted] California, prior to the birth of [his] son[, the Applicant,] as well as after his birth." He states that he "began working for [M-V-] in 1969 [and] was working off the books when [he] was employed in the United States from 1973-1975." He further clarifies that he was living in Mexico from 1979 to 1985, which is why there is no income record on his social security statement.

In her statement on motion, the Applicant's mother indicates that J-F-H- left Mexico for the United States in 1969 and started woodworking for someone in [redacted] California. She states that she knows "he was employed during [*sic*] wood working in [redacted] for many years on and off." She then states that she and J-F-H- dated on and off from 1969-1972 and became engaged in Mexico in February 1972, planning to get married within six to eight months. She states that J-F-H- went back to the United States after their engagement and returned to Mexico in September 1972, just in time for their wedding in [redacted] 1972. She further recalls that J-F-H- "travel[ed] to Mexico for short periods of time between the years 1971 and 1974."

In her statement, A-C- further states that she is "aware that [J-F-H-] left to the United States approximately [two] months after he married his wife, [the Applicant's mother, because she] was present at their wedding and [is] aware of the timeline of when he left to the United States after his wedding."

Next, while we acknowledge that J-F-H- claims he was employed and paid "off the books" in the United States for a time period after the age of 14, he also has not submitted sufficient evidence to demonstrate that he was physically present in the United States for at least five years after turning 14 years old in [redacted] 1962. In his new personal statement, submitted on motion, J-F-H- claims that he was employed by M-V- doing woodworking in [redacted] California, beginning in 1969 and was working "off the books" in the United States from 1973-1975.[2] In her new personal statement, submitted on motion, the Applicant's mother claims that J-F-H- began his employment woodworking for someone in [redacted] California in 1969, and knows that he continued this work in [redacted] for many years on and off. She also states that she and J-F-H- were engaged in Mexico in February 1972, and he went back to the United States after their engagement, returning to Mexico for short periods of

[2] We note that, on motion, J-F-H- does not address his physical presence in the United States at any other time period, such as, when he previously claimed that he resided with and worked near his cousin's home in [redacted] in the 1960s.

time between the years 1971 and 1974. However, the Applicant has not provided supporting evidence of his father's physical presence in the United States such as, for example, bank statements, mortgages, leases, tax returns, or affidavits from former employers or co-workers to support his claim to have been physically present and working off the books from 1969 to 1974. The copy of J-F-H-'s California Identification Card issued on November 23, 1971, demonstrates that he was present in the United States in the month it was issued, but is not demonstrative of his physical presence in the United States during the requisite period. Therefore, the evidence is not sufficient to satisfy the parental physical presence conditions at former section 301(a)(7) of the Act after the age of 14 years.

In addition, on motion, the Applicant argues, through counsel, that we failed to address his alternative argument in our previous decision that "he[is] eligible for citizenship under [section] 301(g) [of the Act], which provides that the US citizen[] parent must be in the United States for a total of "not less than five years, at least two of which were after attaining fourteen years," 8 U.S.C. § 301." The Applicant specifically contends that we failed to consider the last three lines of section 301(g) of the Act, which state: "This proviso shall be applicable to persons born on or after December 24, 1952, to the same extent as if it had become effective in its present form on that date." However, the Applicant's arguments are incorrect. First, former section 301(a)(7) of the Act was re-designated as section 301(g) of the Act on October 10, 1978, by Pub. L. No. 95-432, 92 Stat. 1046 (1978). The requirements of former section 301(a)(7) of the Act remained the same after the re-designation and until November 14, 1986, when Pub. L. No. 99-653, 100 Stat. 3655 (1986) amended the language of the statute by striking out "ten years, at least five" and inserting in lieu thereof "five years, at least two." Further, the language referenced by the Applicant, which indicates that the "proviso" shall be applicable as of December 1952, applies to the specific provision outlining the "periods of honorable service in the Armed Forces of the United States, or periods of employment with the United States Government or with an international organization . . . [which] may be included in order to satisfy the physical-presence requirement of this paragraph[,]" not the entire paragraph of section 301(g) of the Act, as implied by the Applicant. The Applicant in this case was born in [redacted] 1974. Accordingly, former section 301(a)(7) of the Act controls his claim to acquired citizenship.

In sum, the Applicant has not submitted sufficient new evidence, on motion, to show that his father had at least ten years of physical presence in the United States, including five years after he turned 14 years of age and before the Applicant's birth in 1974, as required under former section 301(a)(7) of the Act.

III. CONCLUSION

The Applicant has not submitted new evidence to establish that his father has the requisite physical presence in the United States required for transmission of citizenship under former section 301(a)(7) of the Act, and also has not demonstrated he acquired U.S. citizenship at birth from his father. Consequently, he is not eligible for a Certificate of Citizenship, so the motion is dismissed.

ORDER: The motion to reopen is dismissed.