U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19399412

Date: FEB. 9, 2022

Appeal of Harlingen, Texas Field Office Decision

Form N-600, Application for a Certificate of Citizenship

The Applicant, who was born abroad to married parents in January 1952 seeks a Certificate of Citizenship to reflect that she acquired U.S. citizenship at birth under section 201(c) of the Nationality Act of 1940 (the 1940 Act), 8 U.S.C. § 601(c).

The Applicant originally filed her Form N-600 in 1967 based on a claim that she acquired citizenship under section 201(g) of the 1940 Act from her mother, who was a U.S.-born citizen. The Director of the Harlingen, Texas Field Office denied the Form N-600, concluding that the Applicant's mother did not satisfy the 10-year U.S. residence requirement for transmission of citizenship under that section. The Applicant subsequently filed a motion to reopen the proceedings asserting that both her parents were U.S. citizens at the time of her birth and that she therefore acquired U.S. citizenship under section 201(c) of the 1940 Act. The Director denied the motion, finding the evidence insufficient to establish that the Applicant's father was a U.S. citizen, or that her U.S. citizen mother had the requisite prior residence in the United States to confer her citizenship to the Applicant at birth under section 201(g) of the 1940 Act.[1]

On appeal, the Applicant does not contest the Director's determination that she was ineligible to acquire U.S. citizenship at birth solely from her mother,[2] but asserts that the Director's decision was nevertheless in error because she had demonstrated that her father was also a U.S. citizen and that she met the relevant conditions to acquire U.S. citizenship from both parents under section 201(c) of the 1940 Act.[3]

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

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[1] In the decision, the Director referenced section 301(g) of the Immigration and Nationality Act, 8 U.S.C. § 1401(g), which was not in effect at the time of the Applicant's birth. This does not affect our review of the Applicant's citizenship claim on appeal.

[2] Accordingly, we will not address whether the Applicant's mother met the requirements for transmission of citizenship under section 201(g) of the 1940 Act.

[3] We acknowledge the Applicant's claim and evidence that her sister was issued a Certificate of Citizenship. However, this is not dispositive of the Applicant's citizenship claim under the 1940 Act, as her sister was born in 1955 after the Immigration and Nationality Act went into effect in December 1952.

I. LAW

The Applicant was born in Mexico in [redacted] 1952 to married parents. There is no dispute that her mother was a U.S. citizen, as the record contains the mother's timely registered birth certificate reflecting that she was born in Texas in March 1915. The Applicant's father was born in Mexico in February 1916,[4] but the Applicant asserts that he acquired U.S. citizenship from his own father (the Applicant's paternal grandfather) and was a U.S. citizen at the time she was born. She claims that she was therefore born to two married U.S. citizen parents who conferred U.S. citizenship to her at birth.

To evaluate this claim, we must first determine which laws apply to acquisition of citizenship by the Applicant and her father. 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. *Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1029 n.3 (9th Cir. 2001) (internal quotation marks and citation omitted).

A. Law in Effect at the Time of the Applicant's Birth

As stated, the Applicant was born in Mexico in [redacted] 1952. The Applicant provided evidence that her mother was a U.S. citizen and that her parents were married in Mexico in 1939, prior to her birth. If the Applicant can establish that her father was a U.S. citizen when she was born, her citizenship claim will fall under the provisions of section 201(c) of the 1940 Act, which was in effect from January 1940 until December 1952.[5] Section 201(c) of the 1940 Act provided in relevant part that "[a] person "born outside of the United States . . . of parents both of whom are citizens of the United States and one of whom resided in the United States . . . prior to the birth of such person" shall be a national and citizen of the United States at birth.

There are no subsequent conditions attached to retention of U.S. citizenship acquired under section 201(c) of the 1940 Act.

B. Law in Effect at the Time of the Applicant's Father's Birth

The Applicant's father was born in Mexico in February 1916. The Applicant claims that her paternal grandfather was a U.S. citizen born in Texas in 1869, and that in 1902 he married her paternal grandmother, who was a citizen of Mexico. Based on the father's 1916 in-wedlock birth abroad, we consider his citizenship claim under section 1 of the Act of February 10, 1855, 10 Stat. 604, as incorporated into section 1993 of the Revised Statutes of the United States (the Revised Statutes).[6]

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[4] The Applicant indicated two different dates of birth for her father—February 2016 and September 2017. The father's unabridged birth certificate in the record reflects that he was born in Mexico in February 1916, but his birth was not registered there until 1917.

[5] The 1940 Act was repealed by the Immigration and Nationality Act, Pub. L. No. 82-414, 66 Stat. 163 (June 27, 1952), which took effect on December 24, 1952.

[6] The Act of May 24, 1934, Pub. L. 73-250, 48 Stat. 797, added specific requirements for retention of U.S. citizenship acquired under Section 1993 of the Revised Statutes. However, those requirements do not apply to the Applicant's father who was born before 1934.

Section 1993 of the Revised Statutes provided, in relevant part that:

> All children . . . 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.

C. Burden and Standard of Proof

Because both the Applicant and her father were born abroad, they are presumed to be noncitizens and the Applicant bears the burden of establishing by a preponderance of credible evidence that they are U.S. citizens, as she claims. *Matter of Baires-Larios*, 24 I&N Dec. 467, 468 (BIA 2008). Under the preponderance of the evidence standard, the Applicant must demonstrate that the claims of her and her father's U.S. citizenship are "probably true," or "more likely than not." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

II. ANALYSIS

As stated, there is no dispute that the Applicant's mother was a U.S. citizen at the time of the Applicant's birth, and that the Applicant was born in wedlock. The issues on appeal are: (1) whether the Applicant has established that her father was also a U.S. citizen, and if so (2) whether her parents satisfied the residence condition for the Applicant to acquire U.S. citizenship at birth under section 201(c) of the 1940 Act.

We have reviewed the entire record and for the reasons explained below conclude that the preponderance of the evidence is sufficient to show that the Applicant's father was a U.S. citizen, and that her parents met the residence requirement for transmission of citizenship under section 201(c) of the 1940 Act.

A. Citizenship of the Applicant's Father

To establish that her father acquired U.S. citizenship at birth, the Applicant previously submitted her father's birth certificate, as well as baptismal, marriage, border crossing, and death records of her paternal grandfather.

The father's birth certificate shows that he was born in Mexico to S-H-[7] (father) and J-J- (mother). The Applicant also submitted a copy of the marriage certificate which reflects that her paternal grandparents, S-H- and J-J- were married in Mexico in 1902. These documents, when considered with the Applicant's timely-registered birth certificate which includes her paternal grandparents' names establish that the Applicant's father was born in wedlock and that S-H- was his biological father.

[7] We use initials for privacy.

The evidence is also sufficient to demonstrate that S-H-, the Applicant's paternal grandfather was a U.S. citizen born in Texas in 1869.[8] The record includes a copy of S-H-'s 1869 baptismal record entry from the Catholic Archives of Texas, and copies of his baptismal certificates issued by a church in [redacted] Texas in 1946 and 1965. These documents reflect that S-H- was born in Texas on March 28, 1869, and that he was baptized there on April 8, 1869. Lastly, S-H-'s border crossing record shows that he was admitted to the United States in July 1929 with his three sons, including the Applicant's father, and it contains a note about the place and date of S-H-'s birth in Texas, which is consistent with the information in his baptismal record. Thus, the evidence considered in the aggregate shows that S-H- was a U.S.-born citizen.

We next consider whether S-H- satisfied the conditions in section 1993 of the Revised Statutes to transmit his citizenship to the Applicant's father. As stated, that section provided that "the rights of citizenship [would] not descend to children whose [U.S. citizen] fathers never resided in the United States." Although the Revised Statutes did not define the term "residence," the word "resided" as used in section 1993 has been interpreted broadly to mean that any temporary physical presence in the United States was sufficient to establish prior residence. *See* e.g. *Matter of V-*, 6 I&N Dec. 1 (A.G. 1954) (two visits to the United States by a U.S. 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, S-H-'s baptismal records show that he was born in Texas in March 1869, and that he was baptized there in April 1869, which indicates that he likely lived in Texas with his family and was physically present there for approximately two weeks after birth. This amount of U.S. presence is sufficient to satisfy the residence requirement for transmission of citizenship under section 1993 of the Revised Statutes.

Based on the above, we conclude that the Applicant has demonstrated that her paternal grandfather, S-H- was a U.S. citizen who "resided" in the United States prior to her father's in-wedlock birth abroad in 1916. She has therefore established that her father acquired U.S. citizenship at birth from her paternal grandfather under section 1993 of the Revised Statutes, and we withdraw the Director's determination to the contrary.

B. The Applicant's U.S. Citizenship Claim

The Applicant has demonstrated that her mother was a U.S. citizen born in Texas in 1915, and that her father acquired U.S. citizenship at birth from her U.S.-born paternal grandfather. Accordingly, as the record shows that the Applicant was born to two U.S. citizen parents, we next consider whether she met the requirements in section 201(c) of the 1940 of the Act to acquire U.S. citizenship at birth.

To prevail on her citizenship, the Applicant must show that one of her parents resided in the United States prior to her birth. For the purposes of that section, "the place of general abode shall be deemed the place of residence." "The place of general abode" means an individual's "principal dwelling place," without regard to intent. *Matter of B-*, 4 I&N Dec. 424, 432 (BIA 1951).

The evidence the Applicant previously provided is adequate to show that her mother met the prior residence requirement. The record reflects the mother's 1961 sworn testimony that following her birth

[8] Texas became part of the United States in 1845 following the approval of a joint resolution for the admission of Texas into the Union. *See* Joint Resolution of the Congress of the United States, 9 Stat. 108 (Dec. 29, 1845).

in March 1915 she remained in the United States for "2 or 3 years" until her father took her back to Mexico. The Director accepted that testimony as credible in adjudication of the Applicant's original 1967 citizenship claim under section 201(g) of the 1940 Act. Furthermore, the mother's testimony is consistent with her birth and baptismal certificates, which show that she was born in Texas in March 1915 and baptized there in May that year. This evidence is sufficient to establish that the Applicant's mother "more likely than not" resided in Texas with her family for approximately two months after birth. The Applicant therefore has demonstrated that one of her U.S. citizen parents—her mother—resided in the United States prior to her birth in Mexico in [redacted] 1952, as required under section 201(c) of the 1940 Act.

III. CONCLUSION

The Applicant has demonstrated that she was born abroad to married U.S. citizen parents, one of whom resided in the United States prior to her birth. As such, the Applicant has established that she acquired U.S. citizenship under section 201(c) of the 1940 Act and is eligible for a Certificate of Citizenship.

ORDER: The appeal is sustained.