U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20658460

Date: FEB. 10, 2022

Appeal of Tampa, Florida Field Office Decision

Form N-600, Application for a Certificate of Citizenship

The Applicant, who was born abroad seeks a Certificate of Citizenship to reflect that she acquired U.S. citizenship at birth from her mother under section 309(c) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1409(c).

The Director initially considered the Applicant's citizenship claim under former section 301(a)(7) of the Act, 8 U.S.C. § 1401(a)(7), and denied the Form N-600 concluding that the Applicant's U.S. citizen mother did not have the requisite 10 years of prior physical presence in the United States with 5 years after her 14th birthday to transmit her citizenship to the Applicant at birth. The Director subsequently reopened the proceedings, but again denied the Form N-600 finding the evidence insufficient to support the Applicant's claim that she acquired U.S. citizenship under section 309(c) of the Act as her mother's out-of-wedlock child.

On appeal, the Applicant does not contest ineligibility for acquisition of citizenship under former section 301(a)(7) of the Act,[1] but asserts that the evidence she previously provided is sufficient to establish that her mother satisfied the physical presence condition under section 309(c) of the Act and the Director's decision was therefore in error.

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

I. LAW

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).

The Applicant was born in Mexico in [redacted] 1970, and her birth certificate does not identify her father. The Applicant previously submitted a copy of her parents' marriage certificate to show that they did

[1] Accordingly, we will not address the Applicant's eligibility for a Certificate of Citizenship under that section of the Act. The record reflects that the Applicant's mother was 16 years old when the Applicant was born, and could not therefore satisfy the requirement of having been physically present in the United States for 5 years after turning 14 years old before the Applicant's birth.

not marry until 1973, and there is no dispute that the Applicant was born out of wedlock. The Applicant also provided evidence that her mother was born in Texas in [redacted] 1953 and was a U.S. citizen.

Based on the Applicant's birth in 1970 to an unwed U.S. citizen mother, we evaluate her citizenship claim under section 309(c) of the Act, which provides in pertinent part that a person born abroad "out of wedlock shall be held to have acquired at birth the nationality status of his [or her] mother, if the mother had the nationality of the United States at the time of such person's birth, and if the mother had previously been physically present in the United States or one of its outlying possessions for a continuous period of one year."

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

II. ANALYSIS

The only issue on appeal is whether the Applicant has established that her mother was physically present in the United States for a continuous period of one year prior to 1970.

The Director determined that the evidence, which consisted of the Applicant's and her mother's birth certificates, and affidavits was insufficient to show that the Applicant's mother met this requirement.

The Applicant does not submit any additional documents on appeal, but asserts that the previously provided evidence and information available to the U.S. Citizenship and Immigration Services (USCIS) through its own records establishes that she is a U.S. citizen and is therefore eligible for the requested Certificate of Citizenship.

We have reviewed the entire record, and for the reasons explained below conclude that the Applicant has not met her burden of proof to demonstrate that she acquired U.S. citizenship at birth from her mother.

The mother's birth certificate shows that she was born on [redacted] 1953, in [redacted] Texas and her birth was registered there three days later based on the information provided by her father (the Applicant's maternal grandfather). The birth certificate indicates that the Applicant's mother was born to parents who were both nationals of Mexico[2] and that she was their third child; her father's occupation was listed as a cook, and her mother's occupation was listed as "house work." According to the birth certificate, the Applicant's maternal grandfather indicated that his address at the time was [redacted] Texas. The mother's birth certificate is sufficient to establish only that she was physically present in Texas for approximately three days following her birth, as it does not include any details about where and how long the Applicant's maternal grandfather worked

[2] We note that the record contains a copy of the Applicant's maternal grandmother's birth certificate registered in 1972, which indicates that she was born in Texas in 1931.

as a cook, or whether her grandparents were domiciled in Texas. Rather, the "C/O" address in Texas provided by the Applicant's grandfather indicates that he may not have had a residence or a fixed address in Texas at the time.

The remaining evidence concerning the mother's U.S. physical presence consists of affidavits. When affidavits are submitted to substantiate the merits of a citizenship claim, we determine their evidentiary weight based on the extent of the affiants' personal knowledge of the events they attest to, and the plausibility, credibility, and consistency of their statements with evidence in the record. *Matter of E-M-, 20 I&N Dec. 77* (Comm'r 1989). Here, we cannot give the affidavits significant weight in establishing the mother's physical presence in the United States for a continuous period of one year, because they not only lack sufficient detail and corroborating evidence, but are also inconsistent with each other and the information in the mother's birth certificate.

The Applicant's mother stated in her 2001 affidavit that she lived with her mother (the Applicant's maternal grandmother) in Texas until she was five years old, at which point they both moved to Mexico to reunite with the Applicant's maternal grandfather. She further stated that while she lived in Mexico she met the Applicant's father; they began dating, she became pregnant, and gave birth to the Applicant in [redacted] 1970. The mother indicated that shortly thereafter she moved to [redacted] Texas with the Applicant and the Applicant's father, whom she married there in 1973. Lastly, she stated that following her divorce from the Applicant's father she moved to Florida in 1978 and had been residing there since.

The Applicant did not provide documents, such as her mother's medical, or her maternal grandparents' residential, employment, tax, or other records to support the mother's statement that she lived in the United States for a five-year period from 1953 to 1958. Rather, the Applicant submitted additional 2003 affidavits from her father and her mother's sister. The mother's sister stated that she, her parents, and her siblings (including the Applicant's mother) were living in the United States when the Applicant's mother and father met, and that after the mother got pregnant she "was taken to Mexico to have her baby away from the father." The sister attested that the Applicant's mother continuously lived in the United States since 1966 except for a short time when she went to Mexico to give birth to the Applicant in 1970. The sister's statements, however, are inconsistent with the testimony of the Applicant's mother who stated that she lived in Mexico when she met the Applicant's father and thereafter, until she gave birth to the Applicant in [redacted] 1970. Furthermore, the sister did not explain where in the United States the family lived in the 1960s, if and where her parents were employed at the time, and whether she and the Applicant's mother attended school in the United States (the Applicant's mother would have been 13 years old in 1966). As the sister's statements concerning the mother's physical presence in the United States are neither detailed not consistent with the mother's own testimony, we cannot give them significant weight in establishing when and how long the Applicant's mother was actually physically present in the United States prior to 1970.

The affidavit from the Applicant's father has limited probative value for the same reasons. The Applicant's father stated that he met her mother in 1966 "when [the mother] and her parents . . . worked in the same restaurants in and around the [redacted] area." He recounted that they started secretly seeing each other, but when the mother's parents found out that she was pregnant they took her back to Mexico, and that was why the Applicant was born there. Again, these statements are not consistent with the mother's testimony that she lived in the United States until she was five years old

and returned to the United States in 1970 after the Applicant's birth in Mexico. Furthermore, like the mother's sister the Applicant's father did not provide any specific information about where in Texas the mother and her parents were employed aside from stating generally that they worked in restaurants in the [redacted] area. He also did not explain where the mother and her family lived when he met her in 1966, and he did did not provide any other details that might point to the mother's continuous physical presence in the United States within the 1966-1970 timeframe.

The Applicant does not submit documents, such as lease agreements, utility bills, tax, or other records to resolve the above inconsistencies and to show if, where, and how long her mother lived in Texas before 1970. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988) (providing that an applicant for an immigration benefit must resolve inconsistencies in the record with independent, objective evidence pointing to where the truth lies).

The remaining affidavits are not sufficient to overcome the lack of such primary documentation. The Applicant's maternal grandmother stated in her undated affidavit that at the time she gave birth to the Applicant's mother she and the Applicant's grandfather lived in [redacted] Texas at the house of her friend, R-A-.[3] She explained that she "used to constantly cross the border [to] Mexico" because she had family there, and when the Applicant's mother was five or six years old she took her to Mexico "in a temporary manner"; she "never stop[ped] having [her] home in [redacted] where she continued paying rent and receiving mail at her friend's address. The grandmother further stated that the Applicant's mother lived with her at R-A-'s home in [redacted] "constantly and continuously during the first 5 years of her life," but that she no longer remembered the hospitals where she took the mother for medical visits, and the mother did not go to school because of the family's financial situation. The grandmother did not explain how she and the Applicant's grandfather supported themselves and their children while they lived in [redacted] and she did not provide any information about the employment of the Applicant's grandfather, who according to the mother's birth certificate was a cook. Furthermore, while the grandmother indicated that the family lived in [redacted] since 1950, she did not explain why the Applicant's mother was born in [redacted] (approximately 40 miles away from [redacted] or why, if the family had an established residence in [redacted] where she paid rent and received mail, the grandfather provided the "C/O" address in [redacted] when he registered the birth of the Applicant's mother in 1953. Lastly, although the grandmother stated that the Applicant's mother lived in Texas "continuously" for five years after birth, she also indicated that she "constantly" traveled to Mexico to visit her family.[4] The grandmother did not explain if she took the Applicant's mother with her during those trips or if not, under whose care she left the mother and her siblings[5] in the United States. Lack of this information diminishes the weight of the grandmother's statement about the continuity of the mother's physical presence in the United States from 1953 through 1958. The Applicant does not submit any residential, tax, employment of other records to

[3] We use initials to protect the individual's privacy.

[4] We note that section 309(c) of the Act specifically requires prior "physical presence" of the U.S. citizen mother, which is not the same as "residence." The term "physical presence" has its literal meaning, and is computed by the actual time spent in the United States. *See* 12 *USCIS Policy Manual* H.2(F)(1), https://www.uscis.gov/policy-manual. "Residence," on the other hand is the person's "place of general abode[,] . . . his [or her] principal, actual dwelling place in fact, without regard to intent." Section 101(a)(33) of the Act, 8 U.S.C 1101(a)(33). To establish acquisition of citizenship under section 309(c) of the Act the Applicant must show that her mother was actually *physically present* in the United States for one continuous year during the period she claims her mother *resided* in the United States.

[5] As stated, the mother's birth certificate indicates that she was the third child born to the Applicant's grandmother.

resolve the inconsistent information and to corroborate her mother's and her grandmother's testimony about their residence in Texas in the 1950s.

We acknowledge the previously submitted affidavit from R-A-'s, with whom the grandmother claimed to have resided in [redacted] from 1950 through 2001, but conclude that it also has little evidentiary value. R-A- recounted that she met the Applicant's grandmother in 1950, when the grandmother worked "at [redacted]'s [in] [redacted]' and would see her "every time [she] went to eat there." She stated that the Applicant's grandmother and mother lived with her in [redacted] from 1950 until 2001. However, this statement as it pertains to the mother's residence with R-A- from 1950 to 2001 is not consistent with the mother's 1953 date of birth, as well as the mother's testimony that from 1958 until 1970 she lived in Mexico and that from 1978 she lived in Florida.[6] Furthermore, while the Applicant's grandmother indicated that she paid rent and received mail at R-A-'s address in [redacted] R-A- did not provide any information about their living arrangement, including how much she charged the grandmother to live at her house, how those payments were made, and whether the grandmother's other children and the Applicant's grandfather also lived with her. Nor did R-A- specify what the grandmother's job was at '[redacted]s" or how long she worked there and, as discussed the birth certificate of the Applicant's mother indicates that at least in [redacted] 1953 the Applicant's grandmother worked at home. Lastly, in her own affidavit the grandmother did not mention her employment in the United States, and the Applicant has not provided evidence, such as historical [redacted] address listings, her grandmother's tax, employment, and social security records, or any other documents to corroborate R-A-'s statements about her grandmother's and her mother's residence in the United States during the relevant period prior to 1970.

Similarly, we cannot give significant weight to the testimony of the Applicant's maternal aunt that the Applicant's grandmother "has always lived in [redacted]' and that the Applicant's mother "maintained residence in Texas before the birth [of the Applicant] for at least 5 years in a continuously [sic] manner and without interruptions." As the aunt confirmed that she was born in Mexico in October 1968, she cannot have personal knowledge about the residence of the Applicant's grandmother and her mother in Texas within the 1953-1958 period. Furthermore, section 309(c) requires the Applicant to establish that her mother was actually physically present in the United States for one continuous year, and not that she resided in the United States.

Based on the above, we conclude that although the birth certificate of the Applicant's mother indicates that she was born and likely remained in Texas for three days following her birth, the affidavits are insufficient to establish that she lived in the United States from 1953 until 1958, or from 1966 until 1970, as indicated, and that her actual physical presence in the United States within either of those periods amounted to at least one continuous year, as required under section 309(c) of the Act.

We acknowledge the Applicant's claim that USCIS previously recognized her U.S. citizenship through approval of an immigrant visa petition she filed on behalf of her spouse. However, the Applicant has not explained what specific documents she provided in support of that petition as proof of her claimed

[6] The record contains an approved relative visa petition the Applicant's mother filed in 1982, indicating that she lived in [redacted] at an address different from R-A-'s address.

U.S. citizenship.[7] Furthermore, in considering the Applicant's citizenship claim we are limited to the record of proceedings before us which, as discussed is not sufficient to establish that she acquired U.S. citizenship at birth. *See* 8 C.F.R. § 103.2(b)(16)(ii) (providing that in determination of an individual's statutory eligibility USCIS is limited to the information contained in that individual's record of proceedings). We are not required to approve applications where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See*, e.g., *Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 597 (Comm'r 1988).

Lastly, the Applicant asserts that she has established she is a U.S. citizen because an Immigration Judge terminated removal proceedings against her. But, the Immigration Judge's decision to terminate the removal proceedings reflects only that the Department of Homeland Security did not meet its burden of proof to establish the Applicant's alienage and removability by clear and convincing evidence. *See* 8 C.F.R. § 1240.8(a). As stated, the burden of proof in these proceedings is on the Applicant to establish that she is a U.S. citizen, which requires her to demonstrate in part that her mother was physically present in the United States for one continuous year before her 1970 birth in Mexico. Section 341(a) of the Act, 8 U.S.C. § 1452(a); 8 C.F.R. § 342(c). The Applicant has not met this burden because the affidavits she submitted lack sufficient detail and corroboration, and she has not provided primary documentation to resolve the inconsistencies in the record.

III. CONCLUSION

The Applicant has not met her burden of proof to establish that her U.S. citizen mother was physically present in the United States for a continuous period of one year prior to her 1970 birth in Mexico, as required for transmission of U.S. citizenship under section 309(c) of the Act. The Applicant is therefore ineligible for a Certificate of Citizenship and her Form N-600 remains denied.

ORDER: The appeal is dismissed.

[7] USCIS records show that USCIS subsequently determined that the petition was approved in error and the Applicant's spouse was placed in removal proceedings. We note that the record contains a copy of the Applicant's baptismal certificate issued by a Florida church in 1991, which indicates that she was born in [redacted], Texas in [redacted] 1970 and baptized in Florida in January 1971. The Applicant does not explain how she obtained this certificate, which conflicts with her Mexican birth record, or whether she previously submitted it to USCIS in any other proceedings as evidence of her claimed U.S. citizenship.