U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19875359

Date: MAR. 25, 2022

Appeal of Imperial, California Field Office Decision

Form N-600, Application for Certificate of Citizenship

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

The Director of the Imperial, California Field Office denied the application, concluding that the record did not establish the identity of the Applicant's claimed father and therefore the Applicant had not shown that he acquired U.S. citizenship through a U.S. citizen parent.

On appeal, the Applicant claims that the record is sufficient to show the identity of his father, and submits additional evidence to support his claim.

In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit. 8 C.F.R. § 103.2(b)(1). Upon *de novo* review, we will dismiss the appeal.

I. LAW

The documents provided by the Applicant reflect that he was born in [redacted] 1981 in Mexico. The Applicant provided a Mexican birth certificate that does not list a father's name; however, the Applicant claims that his father was a U.S. citizen named M-M-.[1] A marriage certificate in the record shows that M-M- married the Applicant's mother in Arizona in [redacted] 1983, approximately two years after the Applicant was born. There is no information to indicate that the Applicant's mother is a U.S. citizen. Here, the Applicant seeks a certificate of citizenship indicating that he acquired U.S. citizenship at birth solely through M-M- pursuant to former section 301(a)(7) of the Act.

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. *See Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1029 n.3 (9th Cir. 2001) (internal quotation marks and citation omitted).

[1] Name withheld to protect the individual's identity.

The record shows that at the time of his birth in [redacted] 1981, the Applicant's mother was a foreign national. Moreover, the Applicant claims that his father was a U.S. citizen named M-M-. Accordingly, the Applicant's citizenship claim falls within the provisions of former section 301(a)(7) of the Act, which provided, in pertinent part:

> [A] person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years. . . .

Because the Applicant was born out of wedlock, he also seeks to satisfy the requirements of section 309(a) of the Act, which pertain to legitimation. Prior to November 14, 1986, section 309(a) of the Act required paternity of a child to be established by legitimation while the child was under the age of 21 years. The Act of November 14, 1986 amended section 309(a), applying the changed provisions to individuals who were not yet 18 years of age on November 14, 1986, unless their paternity had been established by legitimation before November 14, 1986. The Applicant was five years old on November 14, 1986, and he is claiming to have been legitimated by his biological U.S. citizen father in 1983. Accordingly, the legitimation provisions of old section 309(a) of the Act apply to his case.

Prior to November 14, 1986, section 309(a) of the Act stated, in part:

> (a) The provisions of paragraphs (3), (4), (5), and (7) of section 301(a), and of the paragraph (2) of section 308 of this title shall apply as of the date of birth to a child out-of-wedlock . . . if the paternity of such child is established while such child is under the age of twenty-one years by legitimation.

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. *See Matter of Baires,* 24 I&N Dec. 467, 468 (BIA 2008). 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).

II. ANALYSIS

The Applicant was born in Mexico in [redacted] 1981 to a foreign national mother. According to the Applicant, his father is a U.S. citizen named M-M-. The Applicant also asserts that his parents were not married when he was born, but that they married each other in 1983, and that he was legitimated by his biological father, M-M-.[2] The Applicant does not claim or provide evidence to show that his mother is a naturalized U.S. citizen; therefore, he seeks to show that he acquired U.S. citizenship solely through the father.

As discussed above, in order to acquire citizenship through his father under former section 301(a)(7) of the Act and old section 309(a) of the Act, the Applicant must demonstrate that: he was born to a

[2] As will be discussed, the Applicant's full record does not show that M-M- is in fact his father.

U.S. citizen father; the father meets the relationship-related requirements in old section 309(a) of the Act; and, prior to the Applicant's birth, the father was physically present in the United States for ten years, five of which occurred after the father turned 14 years old.

We find that for purposes of this decision it is unnecessary for us to determine whether the Applicant has met section 309(a) of the Act conditions, and whether his father had the requisite physical presence in the United States because even *assuming arguendo* that he can satisfy these conditions, there is insufficient evidence to establish that M-M- was in fact the Applicant's father. Therefore, the Applicant also cannot show that he has a father who was a U.S. citizen when the Applicant was born, as required under former section 301(a)(7) of the Act.[3]

The Applicant initially provided a copy of his original 1981 birth certificate, prepared in Mexico in February 1982. It shows that the Applicant was born in Mexico in [redacted] 1981, and lists his mother's name, thereby establishing his parental relationship with his mother. However, there is no information on the extract to show the identity of his father or to indicate that his mother was married at the time of the Applicant's birth.

After issuing a notice requesting additional evidence to establish, among other things, that M-M- was the Applicant's biological father, the Director reviewed the Applicant's response and concluded that he had not shown that his father was M-M-. Specifically, the Director stated that the Applicant had been admitted to the United States as a lawful permanent resident in 1998 based on approval of a Form I-130, Petition for Alien Relative, and affidavit of support. In both documents, M-M- stated that he was the Applicant's step-father. Moreover, the Director noted that the Applicant's immigrant visa and alien registration card both list the Applicant's father's first name as unknown. Consequently, the Director denied the Form N-600, concluding that the Applicant had not provided sufficient evidence to show that he had acquired U.S. citizenship from his step-father, M-M-, whom the Applicant had claimed was his U.S. citizen father.

The record does not show that the Applicant's biological father is M-M-, as claimed, because it contains fundamental, unresolved inconsistencies regarding the actual identity of the Applicant's father.

As part of the initial record before the Director, the Applicant had submitted several documents relating to M-M-'s identity and citizenship, including a certificate of baptism showing that an individual named "E-M-" has this same date of birth and was baptized in Kansas in October 1923. The Applicant also provided other records relating to M-M-, including U.S. military records, income tax returns, and a delayed birth certificate from Kansas. Although these documents show that M-M- is a U.S. citizen who served in the U.S. military and claimed the Applicant as a dependent on his tax returns in certain years, they do not contain information showing that he is either the Applicant's biological father.

[3] We reserve these issues. Our reservation of the issues is not a stipulation that the Applicant has overcome these additional possibilities for denial, and should not be construed as such. Rather, there is no constructive purpose to addressing the additional grounds here, because as shown below, they would not change the outcome of the appeal.

As part of the initial record, the Applicant also submitted a California court-order showing that in 1994, the Applicant's mother successfully petitioned to have the Applicant's last name changed to "M-" to match the last name of M-M-. In her Petition for Change of Name of Minor (petition for name change), the mother had stated that: (1) she was not married to M-M- when the Applicant was born; (2) she had not listed the name of the Applicant's father on his birth certificate; (3) she had married M-M- in [redacted] 1983 and that they had lived husband and wife since then; and (4) the Applicant wished to "carry the name of [M-M-], his father." However, the petition for name change was not accompanied by evidence establishing that M-M- was the Applicant's biological father, and the subsequent court order granted the change of name without making a separate finding that the Applicant's biological father was M-M-.

On appeal, the Applicant claims that he shared a blood relationship with M-M-, that M-M- was a U.S. citizen when the Applicant was born, that his father legitimated him under the laws of Mexico, and that his father always provided for the Applicant until the father died in 2012. The Applicant also claims that a new statement from his mother "constitutes clear and convincing evidence that [M-M-] was the biological father" of the Applicant.

In the attached statement from his mother, she claims that she met M-M- in Mexico and that she became pregnant with his child while they were dating. The mother states that although she tried to name M-M- as the father when she registered the Applicant's birth in Mexico, the registrar told her that she was not allowed to place M-M-'s name on the birth certificate because M-M- was not present and able to give permission. The mother indicates that she married M-M- in 1983, and that he always was involved in the Applicant's life and a deeply caring father who involved himself in the Applicant's upbringing. According to the Applicant's mother, she had been aware that when M-M- petitioned to allow her and the Applicant to immigrate to the United States M-M- listed himself as the Applicant's step-father on the visa application. The Applicant's mother claimed that she could not now explain why the paperwork had been filled out in that manner.

The Applicant also provides a personal statement in which he claims that he has always known that M-M- was his father. In discussing his petition for name change, he states that he remembers being asked some questions by a but does not recall the specific questions. The Applicant also claims that he raised the issue of his U.S. citizenship to his former attorney in 2019, but does not know why the attorney did not make the claim on his behalf at that time.[4]

The documents provided by the Applicant on appeal, including his statement and that of his mother, are not sufficient to show that M-M- was the Applicant's biological parent. Although both the Applicant and his mother expressed their confusion as to why M-M- stated he was the Applicant's step-father on the Applicant's immigration-related documents in 1984, neither of these statements are sufficient to establish that those claims were false or erroneous, nor do they show existence of a biological relationship between the Applicant and M-M-. Although the Applicant claims that M-M- legitimated him under the laws of Mexico, he must first show that M-M- was his biological father

[4] The Applicant appears to be referencing his former attorney in an immigration proceeding, rather than a former attorney in this Form N-600 application process.

before we can assess whether or not the remaining legitimation conditions are satisfied, as former section 301(a)(7) of the Act requires that an Applicant be "born" to a U.S. citizen parent.

Based on the above the Applicant has not submitted sufficient documentation to show that M-M- was his biological father, as the Applicant claims, rather than his step-father, as M-M- had previously attested. Consequently, the record contains such unresolved and contradictory information that we cannot conclude that he has provided sufficient evidence to show that his father is M-M-, as claimed. Therefore, the record does not show that the Applicant meets the former section 301(a)(7) of the Act parental citizenship conditions through a U.S. citizen father. For this reason, the appeal is dismissed.

ORDER: The appeal is dismissed.