U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22857053

Date: OCT. 27, 2022

Appeal of Baltimore, Maryland Field Office Decision

Form N-600, Application for a Certificate of Citizenship

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

The Director of the Baltimore, Maryland Field Office denied the Form N-600 concluding that the Applicant did not establish he met the legitimation and paternity conditions to acquire U.S. citizenship from his father as his out-of-wedlock child.[1]

The Applicant does not submit any additional evidence on appeal, but asserts that he was considered a legitimate child of his U.S. citizen father at the time of birth and the Director's decision was therefore in error.

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

I. LAW

The Applicant was born in [redacted] 1986 in Scotland, United Kingdom to an unmarried noncitizen mother and a U.S. citizen father, J-W-F-.[2] In 1990 the Applicant's mother married O-T-, a U.S. citizen who is not the Applicant's biological father, and who subsequently filed an immigrant visa petition on to classify the Applicant as his stepchild for immigration purposes. A year later the Applicant traveled to the United States with his mother, and in 1991, when the Applicant was four years old his status was adjusted to that of a lawful permanent resident. There is no evidence that the Applicant's mother is or was a U.S. citizen at any time. The Applicant claims that he acquired U.S. citizenship at birth from his biological father, J-W-F- as his out-of-wedlock legitimated child.

[1] The Director also indicated that the Applicant was not eligible to derive citizenship from his U.S. citizen stepfather. The Applicant does not claim eligibility for derivative citizenship on appeal, and we will not address it further. We note, however, that a person born abroad cannot derive U.S. citizenship under by virtue of their relationship to a nonadoptive stepparent. *See Matter of Guzman Gomez*, 24 I&N Dec. 824 (BIA 2008).

[2] We use initials to protect individuals' privacy.

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).

The statute in effect at the time of the Applicant's birth in [redacted] 1986 was former section 301(g) of the Act, which provided in pertinent part that a child born abroad to one U.S. citizen and one noncitizen parent would acquire U.S. citizenship if the child's U.S. citizen parent "prior to the birth of such [child], 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."

A child, who like the Applicant was born out of wedlock to a U.S. citizen father may acquire citizenship from the father only if certain paternity and legitimation requirements set forth in section 309(a) of the Act, 8 U.S.C. § 1409(a) are also met. 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,[3] amended the "old" section 309(a), applying the changed provisions to individuals who, like the Applicant were not yet 18 years of age on November 14, 1986, and whose paternity was not established by legitimation before that date. Thus, unless the Applicant can show that his paternity was established by legitimation prior to November 14, 1986, he must meet the requirements of the "new" section 309(a) of the Act, which provides that a person born out of wedlock to a U.S. citizen father may acquire citizenship only if:

> (1) a blood relationship between the person and the father is established by clear and convincing evidence,
>
> (2) the father had the nationality of the United States at the time of the person's birth,
>
> (3) the father (unless deceased) has agreed in writing to provide financial support for the person until the person reaches the age of 18 years, and
>
> (4) while the person is under the age of 18 years-
>
> (A) the person is legitimated under the law of the person's residence or domicile,
>
> (B) the father acknowledges paternity of the person in writing under oath, or
>
> (C) the paternity of the person is established by adjudication of a competent court.

Because the Applicant was born abroad, he is presumed to be a noncitizen and bears the burden of establishing his 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 his claim is "probably true," or "more likely than not." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010)(citing *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989)).

[3] Pub. L. No. 99-653, 100 Stat. 3655, section 13(b).

II. ANALYSIS

There is no dispute that the Applicant was born out of wedlock and that his biological father is a U.S. citizen. The primary issue on appeal is whether the Applicant has shown that he satisfies the relevant paternity and legitimation provisions of section 309(a) of the Act to acquire U.S. citizenship from his father. If this is established, the secondary issue is whether the Applicant's father met the U.S. physical presence conditions for transmission of citizenship under former section 301(g) of the Act.

The Director determined that the Applicant did not show he satisfied the legitimation or acknowledgment of paternity conditions in the "new" section 309(a) of the Act before turning 18 years of age, because his own testimony indicated that he met his father for the first time in 2017 (at the age of 31 years), and that this was when his father initially acknowledged paternity and agreed to take a DNA test to confirm their biological relationship.

The Applicant asserts that the Director improperly applied the requirements of the "new" section 309(a) of the Act in adjudicating his citizenship claim, because his paternity was established by legitimation under the "old" section of the Act prior to November 14, 1986.

We have reviewed the entire record and considered the Applicant's statements on appeal. For the reasons explained below, we conclude that the Applicant has not demonstrated that he met the requirements under either "old" or "new" section 309(a) of the Act to acquire U.S. citizenship from his father.

A. Legitimation Under "Old" Section 309(a) of the Act.

To satisfy the requirements of the "old" section 309(a) of the Act, the Applicant must show that his paternity was established by legitimation prior to November 14, 1986. The Applicant has not met his burden to show this.

The record includes a copy of the Applicant's birth certificate, which lists only his mother's name and does not identify his father. Nevertheless, the Applicant avers that he was considered his father's legitimate child at birth because Scotland's law on child legitimacy at the time "required courts to treat children born of unwed parents as if their parents had been married at the time of the child's birth." The record includes the previously submitted copy of the Law Reform (Parent and Child) (Scotland) Act 1986 (Law Reform Act of 1986),[4] which provides in relevant part that "the fact that a person's parents are not or have not been married to each other shall be left out of account in—(a) determining the person's legal status; or (b) establishing the legal relationship between the person and any other person."

We acknowledge that the Law Reform Act of 1986 abolished the status of illegitimate children and provided that all children have the same legal status regardless of the marital position of the parents;

[4] Available at: UK Public General Acts, *Law Reform (Parent and Child) (Scotland) Act 1986*, https://www.legislation.gov.uk/ukpga/1986/9/contents.

however, it did not come into force until December 8, 1986,[5] [redacted] months after the Applicant's birth in [redacted] 1986. According to an advisory opinion from the Law Library of Congress, *United Kingdom: Legitimation Laws Since 1970*, 10 (LL File No. 2015-011946) while "Scotland has actively legislated to remove status of illegitimacy and repealed virtually all legislation that refers to illegitimacy . . . it is unclear whether Scotland's legislation applies retroactively." The law of a foreign country is a question of fact which must be proved by an applicant if he or she is relying on that law to establish eligibility for an immigration benefit. *See Matter of Annang*, 14 I&N Dec. 502 (BIA 1973); *Matter of Kodwo,* 24 I&N Dec. 479 (BIA 2008). Here, the Applicant does not provide evidence that the Law Reform Act of 1986 was retroactive or that it otherwise applies to children who like him were born out of wedlock before its effective date, December 8, 1986.

We further note that even if the Applicant had shown that the Law Reform Act of 1986 was retroactive (which he did not), the evidence is insufficient to show that the legislation would serve to establish the Applicant's paternity by legitimation within the meaning of the "old" section 309(a) of the Act. As an initial matter, although the "old" section 309(a) of the Act conflates concepts of "paternity" and "legitimation," those terms have different meanings. "Paternity" pertains to the identity of the child's father, and is a question of fact. "Legitimation," in turn, is a legal concept, as countries or states possess "the power to define what constitutes [legitimacy or illegitimacy], to regulate it, or even to abolish any distinctions founded upon it." *Anderson v. Holder* 673 F.3d 1089 (9th Cir. 2012) (citing *Lau v. Kiley*, 563 F.2d 543, 549 (2d Cir.1977)).

As stated, the Law Reform Act of 1986 provided that all children are equal in the law regardless of the martial status of their parents. However, it also contained a provision concerning presumption of paternity, which stated that a man would be presumed the child's father only if (a) he was married to the mother of the child at any time in the period beginning with the conception and ending with the birth of the child, or (b) if both he and the mother of the child have acknowledged that he is the father and he has been registered as such in any register kept under section 13 (register of births and still-births) or section 44 (register of corrections, etc.) of the Registration of Births, Deaths and Marriages (Scotland) Act 1965 or in any corresponding register kept under statutory authority in any part of the United Kingdom other than Scotland. Law Reform Act of 1986, c. 9, § 5.

Here, the record does not show that the Applicant's biological father was married to his mother at any time, or that his parents jointly acknowledged the father's paternity and complied with the Scotland's registration requirements at any time before November 14, 1986. Rather, the fact that the father's name was not included in the Applicant's birth record and the Applicant was given his mother's last name only indicates that his paternity was not established when he was born or thereafter but prior to November 14, 1986, when the "new" section 309(a) of the Act took effect.

The record also does not show that the Applicant's paternity was established by legitimation pursuant to Scottish law before the enactment of the Law Reform Act of 1986. Specifically under the Legitimation (Scotland) Act 1968 in effect prior to December 8, 1986, children born out of wedlock

[5] *See* The Law Reform (Parent and Child) (Scotland) Act 1986 (Commencement) Order 1986, SI 1986/1983, http://www.legislation.gov.uk/uksi/1986/1983/pdfs/uksi_19861983_en.pdf (stating that "[t]he whole of the Law Reform (Parent and Child) (Scotland) Act 1986 shall come into force on 8th December 1986.")

could be legitimated only by the subsequent marriage of their parents, and the Applicant's parents did not marry.

Based on the above, we conclude that the Applicant has not demonstrated that his paternity was established by legitimation under the law of Scotland, United Kingdom where he was born and resided until he immigrated to the United States in 1991.[6]

B. Requirements Under "New" Section 309(a) of the Act

The previously submitted DNA test results clearly and convincingly establish a biological relationship between the Applicant and his father, as they reflect that the probability of paternity is 99.99%. The Applicant therefore satisfies the blood relationship condition in section 309(a)(1) of the Act. In addition, the father's birth certificate shows that the father was a U.S. citizen born in Washington, D.C. in 1966, and there is nothing in the record to indicate that he may have subsequently lost his U.S. citizenship. This is sufficient to show that the father had the nationality of the United States at the time of the Applicant's birth in 1986, as required in section 309(a)(2) of the Act.

However, the Applicant has not established that he met the remaining conditions in section 309(a)(3)-(4) of the Act before he turned 18 years of age in [redacted] 2004.

Specifically, section 309(a)(3) of the Act requires the Applicant to establish that his father agreed in writing to provide financial support him until he reached the age of 18 years. In order for a document to qualify as a written agreement of financial support under section 309(a)(3) of the Act, the document must be in writing and acknowledged by the father; must indicate the father's agreement to provide financial support for the child; and must be dated before the child's 18th birthday. 12 *USCIS Policy Manual* H.3(C)(1), https://www.uscis.gov/policy-manual. U.S. Citizenship and Immigration Services may consider other similar documentation in which the father accepts financial responsibility of the child until the age of 18, including a written voluntary acknowledgment of a child in jurisdiction where there is a legal requirement that the father provide financial support such as a birth certificate or acknowledgement document submitted and certified by the father. *Id.* Here, the record does not contain such documentation—the name of the Applicant's father is not listed on the Applicant's birth certificate or any other documents dated prior to the Applicant's 18th birthday in 2004, and the Applicant's testimony indicated that he did not meet his father or had any relationship with him until he was 31 years old. The Applicant therefore has not demonstrated that he meets the financial support condition in section 309(a)(3) of the Act.

The Applicant also has not shown that he satisfied one of the three requirements concerning legitimation or establishment of paternity set forth in section 309(a)(4)(A)-(C) of the Act.

As discussed above, the record does not show that the Applicant's father legitimated him under Scotland's law prior to November 14, 1986, or under the law of the Applicant's residence in the United States before he turned 18 years of age in [redacted] 2004. The Applicant therefore does has not demonstrated that he meets the legitimation condition in section 309(a)(4)(A) of the Act.

[6] The Applicant does not claim that his paternity was established by legitimation at any place in the United States before he turned 21 years old.

Furthermore, the record does not contain evidence that the Applicant's father acknowledged paternity in writing under oath, and thus satisfied the requirement in section 309(a)(4)(B) of the Act during the relevant time period prior to the Applicant's 18th birthday. Although the record includes two notarized statements from the father confirming his biological relationship with the Applicant, those statements were executed in 2017 and 2019, when the Applicant was already over 18 years old. Accordingly, the father's statements acknowledging paternity do not meet the statutory age limit in section 309(a)(4)(B) of the Act.

Lastly, the Applicant does not claim or submit evidence that his paternity was established by court adjudication in the United Kingdom or in the United States at any time. He therefore does not meet the condition in section 309(a)(4)(C) of the Act.

Consequently, the Applicant has not demonstrated that he satisfied all of the relevant conditions mandated by the "new" section 309(a) of the Act.

III. CONCLUSION

The Applicant has not met his burden of proof to show that he meets the paternity and legitimation-related conditions under either the "old" or the "new" section 309(a) of the Act. As such he has not established that he acquired U.S. citizenship at birth under former section 301(g) of the Act as his father's out-of-wedlock child. Because the Applicant is not eligible for a Certificate of Citizenship on that basis alone, we do not reach the issue of whether his father satisfied the U.S. physical presence conditions for transmission of citizenship mandated by former section 301(g) of the Act.[7]

ORDER: The appeal is dismissed.

[7] *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).