U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22660374

Date: SEPT. 27, 2022

Appeal of Miami, Florida 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 section 301(g) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(g).

The Director of the Miami, Florida Field Office denied the Form N-600, concluding that the Applicant was not eligible for a Certificate of Citizenship because he did not establish that his father had the prior physical presence in the United States required for transmission of U.S. citizenship.

On appeal, the Applicant submits additional evidence and reasserts eligibility.

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

I. LAW

The Applicant was born in Honduras in [redacted] 1996 to a naturalized U.S. citizen father and a noncitizen mother. At the time of the Applicant' birth, his father was married to a woman who is not the Applicant's mother. The Applicant does not claim or provide evidence that his parents were married to each other at any time.

The applicable law for transmitting U.S. 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).

Because the Applicant was born in 1996, current section 301(g) of the Act in effect since 1986 governs his citizenship claim. That section provides in relevant part that a foreign-born child will be a national and citizen of the United States at birth 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 five years, at least two of which were after attaining the age of fourteen years."

Next, we must determine whether the Applicant was born in- or out-of-wedlock to ascertain whether he must satisfy additional statutory conditions applicable to children of unmarried parents. U.S. Citizenship and Immigration Services (USCIS) considers a child to be born in wedlock when the legal parents are married to one another at the time of the child's birth and at least one of the legal parents has a genetic or gestational relationship to the child. *See* 12 *USCIS Policy Manual* H.3(B), https://www.uscis.gov/policy-manual. Because the Applicant's parents were never married to each other, we conclude that the Applicant was born out of wedlock.

A child born out of wedlock to a U.S. citizen father may acquire citizenship from the father only if certain conditions concerning paternity, legitimation, and financial support are satisfied. Those conditions are set forth in section 309(a) of the Act, 8 U.S.C. § 1409(a), which makes the provisions of section 301(g) of the Act applicable to a person born out of wedlock 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. *See 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 citizenship claim is "probably true." or "more likely than not." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

II. ANALYSIS

The issues on appeal are (1) whether the Applicant has demonstrated that his U.S. citizen father (who was born in Venezuela in 1956) satisfied the prior physical presence requirements for transmission of citizenship and, if so (2) whether he also meets the paternity and other conditions in section 309(a) of the Act.

We have reviewed the entire record as supplemented on appeal, and for the following reasons conclude that the Applicant has met his burden of proof to show that he satisfied the above statutory criteria for acquisition of citizenship at birth.

A. Father's Prior Physical Presence in the United States

As stated, to prevail of his citizenship claim under section 301(g) of the Act the Applicant must show that his father was physically present in the United States for a total of five years, and that at least two of those years occurred after the father's 14th birthday in 1970.

With his Form N-600 and in response to the Director's subsequent request for evidence, the Applicant submitted documents issued to his father between 1979 and 1988, including education, tax, and divorce records, as well as his father's financial, court, tax, and other documents dated from 1990 through 1995.

In denying the application, the Director determined that although this evidence suggested that the Applicant's father was present in the United States, it did not establish that he was present in the country for any particular length of time. Specifically, the Director found that the father's 1979 school certificate showed only that he attended an English language course, but it did not specify the duration of the program. The Director did not evaluate the remaining pre-1996 documents in the decision, noting instead that the documentary evidence dated after the Applicant's birth was neither reviewed nor considered because it was not relevant to his citizenship claim.

On appeal, the Applicant asserts that the Director applied the wrong standard in evaluating the evidence, and did not specifically explain why it was insufficient to show that his father was physically present in the United States for the requisite-five-year period before his birth. He now submits additional documents and evidence of his father's presence in the United States during the relevant period. We conclude that this evidence, considered with the previously provided documentation, establishes that the Applicant's father satisfied the U.S. physical presence conditions for transmission of citizenship under section 301(g) of the Act.

As an initial matter, although section 301(g) of the Act requires specific time periods of prior U.S. physical presence, the physical presence does not need to be continuous; rather, it is counted in the aggregate. *See generally* 12 *USCIS Policy Manual*, *supra*, at H.2(E)(1). If the parent is a naturalized U.S. citizen, the time both before and after naturalization can be counted in determining whether the parent transmitted citizenship to their child. *Matter of M-*, 7 I&N Dec. 643 (Reg'l Comm'r 1958).

The Applicant indicated on the instant Form N-600 that his father has been physically present in the United States since 1979. The record contains the father's certificate of pre-college English course completion issued in April 1979.[1] In addition, the Applicant previously submitted his father's 1983 and 1985 divorce decrees, which indicate that his father resided in Florida at the time, as well as copies of the father's 1984, 1994, and 1995 U.S. federal income tax returns. The Applicant also provided the father's 1992 lease agreement and sales receipts dated from February 1992 through December 1993. These primary documents indicate that the father lived and was physically present in Florida at least during the three-year period from 1983 to 1985, and the two-year period from 1992 through 1993. The supplemental evidence the Applicant provides on appeal includes affidavits from the father's former spouse and his son, who attest that they lived together in Florida as a family from

[1] USCIS records show that in January 1980 the father was admitted to the United States for permanent residence.

1985 through 2001, and documents dated from 1986 through 1995 to corroborate their statements: the father's 1986 civilian registration listing his Florida address and place of employment; various checks from the father and his spouse's joint checking account dated throughout 1989; a copy of a 1990 warranty deed issued to the father, multiple 1990 bank checks and invoices with the father's name and address; his real estate and insurance documents dated in 1991; similar financial and insurance documents dated throughout 1992; 1993 court documents appointing the father a guardian of another person; a copy of the birth certificate of the father's child born in the United States in [redacted] 1996; and photos of the father with his family in the United States throughout the years.

This evidence, considered in its totality, is sufficient to show that the Applicant's father resided in the United States from 1979 through 1996, and that during this 17-year period of residence he "more likely than not" accumulated at least 5 years of actual physical presence in the United States in the aggregate,[2] with all of the presence occurring after the father's 14th birthday.

B. Paternity and Related Conditions

Although not specifically addressed in the Director's decision, the preponderance of the evidence is also sufficient to show that the Applicant met the relevant conditions in section 309(a) of the Act.

The previously submitted DNA test results clearly and convincingly[3] 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.

Furthermore, the evidence shows that the Applicant's father was a U.S. citizen as of [redacted] 1996 when the Applicant was born. Specifically, the record includes copies of the Father's 1986 Certificate of Naturalization and his U.S. passports issued in 2000 and 2012. The Applicant therefore has established that his father had the nationality of the United States at the time of his birth, as required in section 309(a)(2) of the Act.

In addition, the record reflects that a few days before the Applicant's 18th birthday in [redacted] 2014 his father executed a sworn statement acknowledging paternity and promising to financially support the Applicant "until at least his 18th birthday."

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

[2] Unless it is not clear that the parent has more than enough physical presence in the United States, it is usually not necessary to compute U.S. physical presence down to the minute. *See generally* 7 FAM 1133.3-4.

[3] Generally, a preponderance of evidence standard of proof applies in citizenship proceedings; however, section 309(a)(1) of the Act specifically requires that a blood relationship between the U.S. citizen father and his child be established by clear and convincing evidence. The clear and convincing standard of proof requires more than the preponderance of the evidence standard but less than the beyond a reasonable doubt standard. It is a degree of proof which will produce a firm belief or conviction. *See Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *see also Matter of Rehman*, 27 I&N Dec. 124 (BIA 2017) ("[W]hen something has to be proved by clear and convincing evidence, the proof must demonstrate that it is highly probably true.").

birthday. *See* 12 *USCIS Policy Manual*, *supra*, at H.3(C)(1). In addition, USCIS considers whether the agreement was voluntary. *Id.*

The father's sworn statement satisfies all of the above criteria because it is in writing, indicates the father's commitment to financially support the Applicant, and it was executed before the Applicant turned 18 years of age. Moreover, the father's sworn testimony therein that he has always recognized the Applicant as his son, frequently sent him financial support in the past, and sponsored the Applicant for release from the Office of Refugee Resettlement when he arrived in the United States indicates that the financial agreement was voluntary. The Applicant therefore meets the financial agreement condition in section 309(a)(3) of the Act.

Lastly the father's written and notarized statement under oath prior to the Applicant's 18th birthday also satisfies the paternity acknowledgment condition in section 309(a)(4)(B) of the Act.

Based on the above, we conclude that the Applicant has demonstrated that he meets all of the relevant conditions in section 309(a) of the Act to acquire U.S. citizenship from his father.

III. CONCLUSION

The preponderance of the evidence in the record shows that the Applicant's U.S. citizen father satisfied the physical presence requirements for transmission citizenship under section 301(g) of the Act, and that the Applicant also meets all relevant conditions in section 309(a) of the Act to acquire U.S. citizenship as his father's out-of-wedlock child. The Applicant therefore has met his burden of proof to establish that he acquired U.S. citizenship at birth and is eligible for a Certificate of Citizenship.

ORDER: The appeal is sustained.