U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30791856

Date: DEC. 12, 2023

Appeal of Chicago, Illinois 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 mother pursuant to section 301(g) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(g).[1]

The Director of the Chicago, Illinois Field Office denied the Form N-600, Application for Certificate of Citizenship (Form N-600), concluding that the Applicant did not establish as required that his mother was a U.S. citizen. The matter is now before us on appeal.

On appeal, the Applicant submits a brief with additional evidence and renews his citizenship claim.

The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

The record reflects that the Applicant was born in Mexico in [redacted] 1975. The Applicant claims that his parents were married prior to his birth. The Applicant avers that his mother, although born in Mexico in [redacted] 1947, acquired U.S. citizenship at birth from her mother (the Applicant's maternal grandmother), who he claims was a U.S. citizen born in California in 1921.

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, 1028 n.3 (9th Cir. 2001) (internal citation omitted).

Thus, to evaluate the Applicant's U.S. citizenship claim we must first determine which laws govern acquisition of U.S. citizenship at birth by the Applicant and his mother.

[1] Formerly section 301(a)(7) of the Act, 8 U.S.C. § 1401(a)(7).

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

At the time of the Applicant's birth in 1975 former section 301(a)(7) of the Act[2] governed acquisition of U.S. citizenship. It provided in relevant part that a child born abroad to one U.S. citizen and one noncitizen parent would acquire citizenship from the U.S. citizen parent if that 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."

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

When the Applicant's mother was born in 1947, section 201(g) of the 1940 Act,[3] which was in effect from January 13, 1941, until December 24, 1952, provided for transmission of citizenship to foreign-born children by their U.S. citizen parent. That section provided, in relevant part, that a person born abroad to parents one of whom was a U.S. citizen, would acquire U.S. citizenship at birth if the U.S. citizen parent "has had [10] years' residence in the United States or one of its outlying possessions, at least five of which were after attaining the age of [16] years" before the person's birth. Section 201(g) of the 1940 Act further mandated that the person who acquired U.S. citizenship at birth had to comply with certain U.S. residence conditions to retain it. Specifically, the person must have resided in the United States or its outlying possessions for a period or periods totaling five years between the ages of 13 and 21 years.

Because both the Applicant and his mother were born abroad, they are presumed to be noncitizens and the Applicant bears the burden of establishing their claims 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 and his mother's U.S. citizenship claims are "probably true," or "more likely than not." *Matter of Chawathe*, 25 I&N Dec. at 376.

II. ANALYSIS

The issues on appeal are whether the Applicant has met his burden of proof to show that his mother was a U.S citizen and, if so, whether she satisfied the conditions in former section 301(a)(7) of the Act to transmit her citizenship to the Applicant at birth. Upon review we conclude that the Applicant has not met this burden.

The evidence in support of the Applicant's and his mother's citizenship claims consists of copies of the Applicant's birth certificate indicating his mother is V-G-; V-G-'s birth certificate indicating her mother (the applicant's maternal grandmother) is S-C-; S-C-'s delayed birth certificate registered in June 1962 and indicating that she was born in [redacted] California in [redacted] 1921; U.S. Census data from 1930, indicating that a female child, S-C-, was 4-years-old,

[2] We note that the Director incorrectly referenced former section 301(g) of the Act in the decision. The error does not affect our adjudication on appeal, as the physical presence requirements under former sections 301(a)(7) and 301(g) of the Act were the same and did not change until former section 301(g) was amended in 1986.

[3] Again, the Director incorrectly referred to section 301(g) of the Immigration and Nationality Act (the Act), which was not in effect when the Applicant's mother was born. The error does not affect our de novo review on appeal.

born about 1926, and was residing in California; U.S. Census data from 1940, indicating that a female child, S-C-, was 14-years-old, born about 1926, and was residing in California; and sworn affidavits from two of the Applicant's maternal uncles, J-G-C- and E-G-C-, stating that their mother, S-C-, the Applicant's maternal grandmother, was born in California in [redacted] 1921 and providing a list of five addresses and two locations where they contend S-C- resided in the United States.

In denying the Form N-600 application, the Director determined that the Applicant did not provide sufficient evidence to demonstrate that his maternal grandmother, S-C-, met the residency requirements in the United States before his mother, V-G-, was born in Mexico in [redacted] 1947. Specifically, the Director observed that while the two sworn affidavits from the Applicant's uncles listed various addresses in the United States and declared that S-C- resided at those locations, they did not list any purported dates of residence for those addresses, nor did they state how J-G-C- and E-G-C- came to know this information or where it came from. Further, the Director noted that the U.S. Census data is not refutable evidence that the individual was residing in the United States on a regular and continuous basis from one Census to the next and regardless, the U.S. Census data provided does not necessarily indicate that it refers to the Applicant's maternal grandmother, S-C-, as there is a discrepancy of five years in the age and year of birth. As such, the Director concluded that the Applicant's mother was not a U.S. citizen at birth and had no ability to transmit U.S. citizenship to the Applicant under section 301 of the Act. The Director further noted that the Applicant's mother naturalized in 2015 when the Applicant was 40-years-old and he did not derive citizenship after his birth under any other section of law.

On appeal, the Applicant argues that the Director's decision was erroneous as it did not accord proper weight to the evidence submitted.[4] In reference to the U.S. Census data, the Applicant contends that the English fluency in S-C-'s household at the time of the 1930 and 1940 U.S. Census is unknown, and the likelihood that the census taker spoke Spanish is minimal, which could explain why there was an age discrepancy. Nevertheless, the Applicant argues that because the U.S. Census Bureau states that the data collected counts individuals at their usual residence where they live and sleep most of the time, it must be given considerable weight to account for S-C-'s physical residence in the United States from at least her date of birth to 1940. In reference to the sworn affidavits from the Applicant's uncles, J-G-C- and E-G-C-, the Applicant contends that although they do not include specific dates of residence or how they came to possess the knowledge they are attesting to, they are highly specific as to the addresses where S-C- lived, providing complete mailing addresses rather than just vague references. The Applicant then avers that Ancenstry.com indicates that there appears to be social security documentation showing that S-C- was living in [redacted], California prior to 1947, and he has requested records from the Social Security Administration for confirmation, as well as exploring whether any school records from that time still exist. The Applicant submits a brief, copies of the USCIS Policy Manual pertaining to "burden and standards of proof" and "evidence," and a copy of frequently asked questions regarding "who is included in the resident population counts."

As a preliminary matter, we acknowledge the Applicant's argument that the Director denied the Form N-600 without first issuing a request for evidence (RFE) to afford the Applicant an opportunity

[4] We note the Director's decision erroneously stated a heightened level of scrutiny is applied to Form N-600 evidence submitted by an individual in removal proceedings. Evidence submitted by Form N-600 applicants in removal proceedings is held to the same scrutiny as evidence submitted by those who are not in proceedings. Ultimately, the Director's analysis of the evidence and legal analysis as a whole was correctly applied in this case.

to provide additional evidence in support of his citizenship claim. However, neither the statute and regulations, nor relevant USCIS policy require the issuance of an RFE where eligibility was not established at the time of filing. *See* 8 C.F.R. § 103.2(b)(8)(ii) (stating that,"[i]f all required initial evidence is not submitted with the benefit request or does not demonstrate eligibility, USCIS in its discretion may deny the benefit request for lack of initial evidence or for ineligibility . . . ."); *see also 1 USCIS Policy Manual, supra,* E.6(F), (providing guidance as to when and if to issue an RFE, but nowhere relieving the petitioner from the burden of providing initial evidence, as required under the regulations). Accordingly, the Director properly exercised discretion and denied the Form N-600 without first issuing an RFE.

Next, in order to evaluate the Applicant's U.S. citizenship claim we must first determine whether his mother, V-G-, acquired U.S. citizenship at birth. In order to do so, we must address whether the Applicant's maternal grandmother, S-C-, was a U.S. citizen who resided in the United States for at least 10 years prior to [redacted]1947, and that five of those years were after the grandmother's 16th birthday in [redacted]1937. In this matter, we agree with the Director's determination that the Applicant did not establish that his maternal grandmother resided in the United States as required under section 201(g) of the 1940 Act to transmit her U.S. citizenship to the Applicant's mother.

The Applicant's statements on appeal are not sufficient to overcome the evidentiary deficiencies identified by the Director. First, although the U.S. Census data clearly indicates that there was a female child named S-C- residing in California in 1930 and 1940, there is a clear discrepancy in the age and date of birth of that female child when compared to the Applicant's maternal grandmother. While we acknowledge the Applicant's contention that a language barrier may explain the discrepancy in the age of S-C- found in the 1930 and 1940 U.S. Census data, the Applicant does not offer any additional evidence to corroborate that the S-C- identified in the U.S. Census data is in fact his maternal grandmother, such that we could conclude they are the same person. Further, while the Applicant mentions on appeal that Ancestry.com indicates his maternal grandmother, S-C-, was residing in California prior to 1947 based on social security documentation, he does not submit any evidence in support of this claim. The Applicant has not provided any other primary evidence to support his claim that his maternal grandmother, S-C-, consistently resided in the United States for 10 years, at least five of which were after attaining the age of 16, between 1921-1947.

Additionally, the information in his uncles' affidavits is not sufficient to overcome the lack of such primary evidence. When affidavits are submitted to prove 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). We cannot give the uncles' affidavits significant weight in establishing their mother's (the Applicant's maternal grandmother) residence in the United States during the relevant 1921-1947 period indicated, as the affidavits lacks sufficient detail and corroborating evidence to support their claims.

Here, the affidavits from the Applicant's uncles, J-G-C- and E-G-C-, provide a list of addresses in the United States where they assert their mother, S-C-, resided. However, neither J-G-C- nor E-G-C- indicate when S-C- resided at those addresses or how they had personal knowledge of those addresses where they assert she resided, which diminishes the probative value of their testimony.

Further, the Applicant does not provide primary documents[5] to support his uncles' claims of S-C-'s residence in the United States, nor does he submit any other affidavits from individuals who may have had personal knowledge of S-C-'s residence in the United States from 1921 through at least 1942. Thus, while we do not dispute that it is possible that S-C- resided in the United States within this timeframe, the evidence is insufficient to determine the specific periods of her residence.

Based on the above, we conclude that the Applicant has not demonstrated that his maternal grandmother, S-C-, resided in the United States for 10 years, at least 5 years of which were after she turned 16-years-old in [redacted] 1937, and before the Applicant's mother was born in Mexico in [redacted] 1947. The Applicant therefore has not established that his maternal grandmother satisfied the specific residence requirements in section 201(g) of the 1940 Act to transmit her citizenship to the Applicant's mother. Consequently, he has not shown that his mother acquired U.S. citizenship at birth from his grandmother and thus, that she was a U.S. citizen at the time of his birth in 1975.

Because this determination is dispositive of the Applicant's appeal, we decline to reach and hereby reserve the issues concerning his mother's physical presence in the United States during the periods required for retention of U.S. citizenship acquired under section 201(g) of the 1940 Act, and for transmission of citizenship under former section 301(a)(7) of the Act. *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).

III. CONCLUSION

The preponderance of the evidence in the record is insufficient to establish that the Applicant's mother acquired U.S. citizenship under section 201(g) of the 1940 Act through birth to a U.S. citizen mother. Consequently, the Applicant has not demonstrated that he was born to a U.S. citizen mother, as required under former section 301(a)(7) of the Act. As such, he is ineligible for a Certificate of Citizenship and his Form N-600 remains denied.

ORDER: The appeal is dismissed.

[5] We have addressed the deficiencies in the U.S. Census data provided.