U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29138918

Date: DEC. 21, 2023

Motion on Administrative Appeals Office Decision

Form N-600, Application for Certificate of Citizenship

The Applicant seeks a Certificate of Citizenship to reflect that he derived U.S. citizenship from a U.S. citizen parent under former section 301(a)(7) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(a)(7).[1]

The Director of the Jacksonville, Florida Field Office denied the application, concluding that the record did not establish that the Applicant satisfied the conditions for acquiring U.S. citizenship at former section 301(a)(7) of the Act. We rejected a subsequent appeal. The matter is now before us on combined motions to reopen and reconsider.[2]

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). As will be discussed, a motion to reopen and a motion to reconsider also must establish eligibility for the benefit sought and here Applicant has not shown that he satisfies the requirements for a Certificate of Citizenship under former section 301(a)(7) and old section 309(a) of the Act. Consequently, upon review, we will dismiss the combined motions.

I. LAW

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our prior decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

---

[1] Former section 301(a)(7) was redesignated as section 301(g) of the Act, 8 U.S.C. § 1401(g), by Act of October 10, 1978, Pub. L. 95-432, 92 Stat. 1046.

[2] Although the motion to reopen was untimely, we will excuse the late filing as a matter of discretion given the Applicant's limited ability to file a new application under the law. *See* 8 C.F.R. §§ 103.5(a)(1)(i), 341.5(e); *see also Ortega v. Holder*, 592 F.3d 738, 745-46 (7th Cir. 2010) ("Although such an individual still must rely on the agency's discretion to reopen such proceedings, we have to believe that [the AAO] will exercise this discretion judiciously and with an eye to accomplishing Congress's purpose.").

The Applicant asserts he was born out of wedlock in Uganda in [redacted] 1966 under the name O-M-Z- to a U.S. citizen father named O-Z-. He states, however, that his mother changed his name while he was still in Uganda and that he last entered the United States in 2019 under his current name, M-M-.[3]

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). Based on the Applicant's claimed birth in Uganda in 1966 to a U.S. citizen parent, his citizenship claim falls within the provisions of former section 301(a)(7) of the Act, which provided in relevant part, that the following individuals acquired citizenship at birth:

> [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: *Provided*, That any periods of honorable service in the Armed Forces of the United States by such citizen parent may be included in computing the physical presence requirements of this paragraph.

Additionally, because the Applicant claims that he was born out of wedlock to a U.S. citizen father,[4] he must satisfy the legitimation provisions set forth in former section 309(a) of the Act, which required that paternity be established by legitimation before a child turned 21 years of age. *See* former section 309(a) of the Act. Legitimation is the act of placing a child born out of wedlock in the same legal position as a child born in wedlock. *Matter of Reyes,* 17 I&N Dec. 512, 514 (BIA 1980).

Moreover, the Applicant must meet the definition of a "child" in section 101(c)(1) of the Act, 8 U.S.C. § 1101(c)(1) (1952), which provides, in pertinent part, that the legitimation must be under the laws of the child's or father's residence or domicile, whether in the United States or elsewhere.

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. *Matter of Baires,* 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. at 376.

II. ANALYSIS

As discussed above, in order to acquire citizenship as a child born out of wedlock through a U.S. citizen father under former section 301(a)(7) and old section 309(a) of the Act, the Applicant must

---

[3] Names withheld to protect the individuals' identities.

[4] Section 309(a), as amended by the 1986 Act, applies to persons who had not yet attained 18 years of age on November 14, 1986, the date of enactment. Because the Applicant was over 18 years of age on November 14, 1986, the legitimation provisions in the former version of section 309(a) of the Act apply to him. *See* section 8(r) of the Immigration Technical Corrections Act of 1988, Pub. L. No. 100-525, 102 Stat. 2609 (1988).

demonstrate, in pertinent part, the following: he was born to a U.S. citizen father; the relationship-related and legitimation 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 a period (s) of ten years, five of which occurred after the father turned 14 years old.

The Applicant claimed on the Form N-600 to have acquired U.S. citizenship through a U.S. citizen father named O-Z-. The Applicant also asserted on his Form N-600 that he is now named M-M- but that his own name used to be O-M-Z-. The Applicant did not claim or provide evidence to show that his mother is a U.S. citizen; therefore, he seeks to show that he acquired U.S. citizenship solely through his claimed U.S. citizen father.

The Applicant's initial evidence includes a South Carolina birth certificate showing that his claimed father, O-Z-, is a U.S. citizen through his 1935 birth in the United States. The Applicant also provided a birth registration dated August 1972 showing that a child named O-M-Z- was born in Uganda in [redacted] 1966 to a father named O-Z- and a mother named S-K-. He also provided a 2006 notarized affidavit from O-Z-, asserting that O-M-Z is now known as M-M- and is his son.

The Director issued an April 2020 request for evidence (RFE) to show that the Applicant had been legitimated prior to turning 21 years of age. The Applicant did not respond to the RFE. The Director ultimately denied the Form N-600, concluding that the Applicant had not established that his U.S. citizen father had legitimated him under the laws of Uganda as required under the Act.

On appeal, the Applicant contends that the Director erroneously denied the Form N-600 through reliance on "a non-existent letter of May 10, 2020."[5] The Applicant claims that Uganda was O-M-Z-'s domicile for purposes of establishing that the Applicant was legitimated and he includes on appeal a 1985 legal opinion from the U.S. Law Library of Congress (LLOC opinion) on legitimation and registration of child births in Uganda,[6] as well as a copy of Uganda's Births and Deaths Registration Act, 1970. The Applicant also includes a 2022 statement from his mother, S-K-, who asserts that: (1) she and O-Z- had a son named O-M-Z- who was born out of wedlock in Uganda in 1966; (2) O-Z- told S-K- that he had registered O-M-Z-'s birth with the U.S. embassy in Uganda; and (3) she and O-Z- together had registered the child's birth with the authorities in Uganda. S-K also states that although her son was initially named O-M-Z-, she changed his name to the more Ugandan-sounding name of M-M- before registering the child for primary school in 1972 because at that time, foreigners were in danger under the regime of Idi Amin, the former president of Uganda. The Applicant claims on appeal that his mother and father's statements in the record are collective proof of: (1) his legitimation in Uganda while under 21 years of age; and (2) his father's 10 years of physical presence through his residence in the United States.

The record does not support the Applicant's assertions on appeal, as he has not met this burden to establish that he is the child named O-M-Z- on the 1972 Ugandan birth registration and that he was

[5] Although the Director indicated in the denial that a document was subsequently added to the "record" in May 2020, the referenced document is a copy of an addendum to the Form N-600 in the record that was electronically uploaded again, rather than a document provided by the Applicant. The Applicant also notes on appeal that he did not submit the addendum, and as stated, our review does not reflect the Applicant responded to the RFE.

[6] The LLOC issued an updated opinion in 2018. *Uganda: Legitimation Law*, LL File No. 2018-016580, prepared in August 2018.

legitimated by a U.S. citizen parent named O-Z-, as he claims. The record instead shows that the Applicant is named M-M- and that he has lived and worked in Uganda throughout his entire life under the name M-M-, ultimately travelling to the United States with a Ugandan passport issued under that name. The record does not include any formal record of his claimed name change. We acknowledge his mother's statement in which she claims that she only informally changed O-M-Z-'s name to M-M- in 1972 because there was no formal mechanism in Uganda to make name changes until 1973; however, neither the Applicant nor his mother explain why a formal name change request was not made later after 1973. Moreover, the Applicant's own evidence contradicts his mother's claim regarding the existence of a formal name change mechanism. Specifically, the copy of Uganda's Births and Deaths Registration Act, 1970, that he provides on appeal indicates that prior to the Applicant's name change in 1972, a formal mechanism at Part IV had already been established for a parent to change the name of a child under the age of 21 years through the filing of a prescribed form with the registrar of the births and deaths in the district in which the birth of the child was initially registered. Other documents in the record further contradict the Applicant's claim to be the child of O-Z-. Specifically, two 1988 letters from the Red Cross, one of which is addressed to the Applicant under the name M-M-, indicate that the Red Cross was responding to the Applicant's inquiries *on behalf of another individual named M-C-* who was seeking to locate *his* U.S. citizen father named O-Z-. Consequently, the Applicant's own evidence indicates that an individual in Uganda other than the Applicant previously claimed O-Z- was his U.S. citizen father in 1988. Finally, the Applicant provided a 2021 deoxyribonucleic acid Test Report (DNA report) on appeal that he claimed establishes O-Z- is his biological father. Although the DNA report states that there is a greater than 99% probability that an individual with the Applicant's name of M-M- is the biological child of an individual identified as "O-Z-," there is no information explaining what identification documents, if any, the DNA testing company had reviewed to verify the identities of the donors of the DNA materials. Therefore, the Applicant's evidence does not support his claim to be O-M-Z-, the biological child of an individual named O-Z-.

Moreover, even assuming the Applicant is O-M-Z-, the record indicates that O-M-Z- was born out of wedlock and does not show that O-Z-, the claimed U.S. citizen father, legitimated O-M-Z- under the laws of Uganda during the period of the claimed father's domicile there (between the Applicant's 1966 birth and the father's departure in 1972) and while O-M-Z- was still under the age of 21 years.[7] *See Matter of P-*, I&N Dec. 689, 691 (BIA 1954) (citing 32 Op. Atty. Gen. 162, at 164-165 and 39 Op. Atty. Gen. 556, at 557-558, in stating that the Board of Immigration Appeals and the U.S. Department of State had long held that children born out of wedlock to U.S. citizen fathers and noncitizen mothers derive citizenship under the former citizenship provision at issue in that case, only when such children were legitimated under the laws of the father's domicile). According to a 2018 LLOC Opinion, "[w]ith regard to the question of legitimation of children born out of wedlock, not much information is available," but the 1985 LLOC opinion that the Applicant provides on appeal clarifies that the father of a child born in Uganda outside of marriage was not required to be entered as the father of the child in the birth registry unless the father consented, either by signing: (1) the register as the father; or (2) a prescribed consent form and providing it to the appropriate register of births and deaths in Uganda. Although the inclusion of O-Z-'s name on the late-filed birth registration suggests that O-Z- consented

[7] The Applicant does not assert, and the record does not show, that his father legitimated him under the laws of any other domicile where the father resided while the Applicant was still under age 21. As the Director noted, the Applicant himself indicated that after 1972, he did not have any further contact with his father until the age of 23.

to being named as O-M-Z-'s father, we note, as an initial matter, that a delayed birth certificate does not have the same weight as a contemporaneous birth record, even when unrebutted by contrary evidence, due to the potential for fraud. *Matter of Bueno-Almonte*, 21 I&N Dec. 1029, 1032-33 (BIA 1997). Here, as stated, the record does not establish that the Applicant is in fact the child O-M-Z- listed on the birth registration. Further, the Applicant's mother in her statement specifically indicates that registration of birth was "compulsory under [Uganda's] Births and Deaths Registration Act, Chapter 190 (1964 Revision); but neither she nor the Applicant explain why then she and O-Z- did not register O-M-Z-'s birth until six years later in [redacted]1972. Further, the record does not contain supporting evidence to show that the 1972 birth registration was made in accordance with the requirements for late registration of a birth. According to section 6 of Uganda's Births and Deaths Registration Act, 1970, as amended, a birth could be registered outside the mandatory three-month registration period following the birth of newborns only upon completion of additional steps at the direction of the Registrar General of Uganda. The record here, including O-M-Z-'s 1972 birth registration, lacks information to show that the registration was made in accordance with the additional legal steps, at the Direction of the Registrar General of Uganda.

Consequently, the Applicant has not shown that he is O-M-Z-, the child of a U.S. citizen named on the 1972 birth registration, and the birth registration filed six years after the child's birth is not sufficient to establish that O-Z- legitimated OM-Z- in accordance with the laws of Uganda, as claimed. Therefore, the Applicant has not shown that he is the child named O-M-Z- born out wedlock to a U.S. citizen father and that he was legitimated by the U.S. citizen, as required to satisfy old section 309(a) of the Act requirements. Therefore, the Applicant has not established eligibility for derivative citizenship under former section 301(a)(7) of the Act, and the combined motions will be dismissed based on the Applicant's ineligibility. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

ATTACHMENTS:

1. Copy of 2018 Law Library of Congress Opinion, *Uganda: Legitimation Law*, LL File No. 2018-016580, (9 pages)