U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24283166

Date: FEB. 21, 2023

Appeal of Los Angeles, California 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 201(i) of the Nationality Act of 1940 (the 1940 Act), 8 U.S.C. § 601(i).[1]

The Director of the Los Angeles, California Field Office considered the Applicant's citizenship claim under section 201(g) of the 1940 Act[2] and denied the Form N-600 concluding that the Applicant did not establish his father had the requisite prior residence in the United States or one of its outlying possessions to transmit his U.S. citizenship to the Applicant at birth. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Applicant asserts that he acquired U.S. citizenship under section 212(i) of the 1940 Act, and the Director's adverse decision was therefore in error. He further states that he also established he complied with the applicable requirements to retain his citizenship.

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 sustain the appeal.

I. LAW

The record reflects that the Applicant was born abroad in [redacted] 1950 to married parents.[3] His father was born in the Philippines in [redacted] 1922 and resided there until he moved in California in 1959. In October 1941, the Applicant's father enlisted in the U.S. Armed Forces in the Philippines and continued to serve in the U.S. military through the date of his naturalization in November 1946. There is no evidence that the Applicant's mother was a U.S. national or citizen at the time of his birth.

[1] Repealed by the Immigration and Nationality Act, Pub. L. No. 82-414, 66 Stat. 163, eff. Dec. 24, 1952 (June 27, 1952).
[2] In the denial, the Director incorrectly referred to section 301(g) of the Immigration and Nationality Act (the Act), which was not in effect when the Applicant was born. The error does not affect our de novo review on appeal.
[3] The record includes the parents' marriage certificate, which reflects they were married in the Philippines in 1944.

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).

One of the statutes that governed acquisition of U.S. citizenship by persons born outside of the United States and its outlying possessions at the time of the Applicant's birth in 1950 was section 201(g) of the 1940 Act, as in effect since January 13, 1941. 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 [5] of which were after attaining the age of [16] years" before the person's birth.

Section 101(d) of the Nationality Act of 1940 defined the term "United States" as the continental United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands of the United States. Section 101(e) of the 1940 Act, in turn defined the term "outlying possessions" as "all territory, other than as specified in section 101 (d) over which the United States exercised rights of sovereignty, except the [Panama] Canal Zone."

Lastly, section 104 of the 1940 Act provided that a person's "place of general abode shall be deemed the place of residence."

In 1946, Congress passed an amendment adding section 201(i) to the 1940 Act. *See* Act of July 31, 1946, Pub. L. 79-571, 60 Stat. 721. Section 201(i) allowed a U.S. citizen parent who honorably served in the U.S. Armed Forces during World War II to transmit citizenship to their child if they "had [10] years' residence in the United States or one of its outlying possessions, at least [5] of which were after attaining the age of [12] years" before the child's birth. Section 212(i) of the 1940 Act applied retroactively to children who were born after January 14, 1941, but before July 31, 1946, as well as prospectively to children born after that date and until the 1940 Act was repealed in 1952. *See Matter of A-*, 2 I&N Dec. 799, 801 (BIA 1947).

Both section 201(g) and (i) of the 1940 Act mandated that the person who acquired U.S. citizenship at birth had to comply with certain U.S. residence conditions to retain it. Pursuant to subsequently enacted provisions, the retention requirement may be satisfied in part by 5 years of continuous physical presence in the United States between the ages of 14 and 28 years (if begun before October 27, 1972).[4]

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 show that his citizenship claim is "probably true," or "more likely than not." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

[4] *See* former section 301(b) of the Immigration and Nationality Act, as originally enacted as originally enacted by the Act of June 27, 1952, Pub. L. 82-414, 66 Stat. 163. Absences of less than one year in the aggregate during the requisite five-year period do not break continuity of physical presence. *See* Act of September 11, 1957, Pub. L. No. 85-316, 71 Stat. 639.

II. ANALYSIS

There is no dispute that the Applicant was born to a U.S. citizen father, as the record contains the father's 1946 Certificate of Naturalization and the Applicant's timely registered 1950 birth certificate, which identifies his father and thus establishes the requisite parent-child relationship between them. The issues on appeal are whether the Applicant has shown that his father satisfied the relevant U.S. residence requirements for transmission of citizenship and if so, whether he has also established that he met the U.S. physical presence conditions to retain his citizenship.

In denying the Applicant's Form N-600 the Director stated generally that the evidence, which included the father's naturalization certificate and documents related to his U.S. military service in the Philippines was insufficient to show that the father resided in the United States or one of its outlying possessions for 10 years before the Applicant's birth in 1950, and that 5 of those years were after the father's 16th birthday in 1938.

The Applicant explains that he is claiming acquisition of U.S. citizenship under section 212(i) of the 1940 Act, which requires a shorter period of residence, and avers that his father met that requirement through his residence in the Philippines, which was an outlying possession of the United States until July 4, 1946. The Applicant also resubmits a copy of the U.S. passport issued to him and his siblings in 1960 as evidence that the U.S. Department of State previously determined he acquired U.S. citizenship from his father. Lastly, he states that the 1960 U.S. entry stamp in that passport, as well as his Social Security earnings statement, U.S. identity documents, and Selective Service Registration card show that he complied with the citizenship retention requirements.

We have reviewed the entire record, and conclude that the Applicant has met his burden of proof to show that he acquired U.S. citizenship at birth from his father.

A. Acquisition of citizenship under section 201(i) of the 1940 Act

Although the Director evaluated the Applicant's citizenship claim under section 201(g) of the 1940 Act, the preponderance of the evidence is sufficient to show that the Applicant's father met the criteria for transmission of citizenship under section 201(i) of the 1940 Act, which was also in effect at the time of the Applicant's birth in 1950. Specifically, the record includes a 1946 officer's certificate confirming that in October 1941 the Applicant's father enlisted in the U.S. Army in the Philippines, and that as of August 1, 1946, his service in the rank of corporal was "satisfactory" and his character "excellent." In addition, the father's Certificate of Naturalization, as well as his Form N-403, Preliminary Form for Petition for Naturalization under Section 701 or 702 of the Nationality Act of 1940, and Form N-411, Petition for Naturalization, reflect that he naturalized in the Philippines as a U.S. citizen in November 1946 under section 702 of the 1940 Act[5] based on his honorable service in the U.S. military during World War II. Accordingly, the Applicant has shown that section 212(i) of the 1940 Act applies to his citizenship claim.

[5] Section 702 of the 1940 Act provided for naturalization of persons who "while serving honorably in the military or naval forces of the United States [were] not within the jurisdiction of any court authorized to naturalize [noncitizens]," and who met specific criteria for naturalization set forth in section 701 of the 1940 Act.

As stated, to establish that he acquired U.S. citizenship under that section the Applicant must demonstrate that his father resided in the United States *or one of its outlying possessions* for 10 years before the Applicant's birth in 1950, and that 5 of those years were after his father turned 12 years old in 1934. The preponderance of the evidence in the record is sufficient to show that the Applicant's father met those requirements. According to the father's naturalization and military service-related documents, as well as the information in the Applicant's birth certificate, the father was born in the Philippines in 1922 and continued to reside there throughout the period of his 1941-1946 military service, at the time of his November 1946 naturalization, and when the Applicant was born in [redacted] 1950.

The Philippines was considered an outlying possession of the United States from April 11, 1899, (when the United States acquired the Philippine Islands from Spain)[6] until July 4, 1946, (when the United States recognized the Philippines as an independent nation). *See In Status Determination Proceedings*, 4 I&N Dec. 575, 576 (C.O. 1951) (holding that "[f]or the purposes of the pertinent sections of the Nationality Act of 1940 it may be accepted as common knowledge that until July 4, 1946, the Philippine Islands were outlying possessions of the United States."); *Rabang v. INS*, 35 F.3d 1449, 1461 (9th Cir. 1994) (stating that "[f]rom the Spanish cession in 1898 until final independence in 1946, the Philippine Islands were American territory subject to the jurisdiction of the United States.") (citing *Barber v. Gonzales*, 347 U.S. 637, 639 n.1 (1954)).

The evidence referenced above indicates that the Applicant's father "more likely than not" resided in the Philippines from his birth in 1922 through July 4, 1946, a period of over 10 years when the Philippines was an outlying possession of the United States, and that at least 5 of those years were after the father's 12th birthday in 1934. Consequently, the Applicant has demonstrated that he acquired U.S. citizenship at birth from his father under section 212(i) of the 1940 Act.[7]

Lastly, we note that the record contains a copy of a U.S. passport the U.S. Embassy in Manila, Philippines issued jointly to the Applicant and his two siblings in 1960. The passport contains the photograph of the Applicant and his siblings and a note printed therein refers to them as "citizen(s) of the United States of America." This passport, although no longer valid further indicates that the U.S. Department of State determined at the time that the Applicant acquired U.S. citizenship at birth from his father, and was entitled to evidence of such status.

B. Citizenship Retention Requirements

Although not specifically addressed in the Director's decision, the Applicant has also demonstrated that he complied with the five-year U.S. continuous physical presence requirement to retain his U.S. citizenship.

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[6] *See* Treaty of Peace between the United States of America and the Kingdom of Spain (Dec. 10, 1898), 30 Stat. 1754 (proclaimed at Washington, D.C. on April 11, 1899).

[7] This evidence is also sufficient to show that the father met the requirement in section 201(g) of the 1940 Act of prior residence in one of the U.S. outlying possessions for 10 years, with at least 5 years after the father's 16th birthday in 1938. We note that U.S. citizen parents who served in the U.S. Armed Forces were eligible for the benefits of section 212(i) of the 1940 Act even if they met the residence requirements of section 201(g) of the 1940 Act. *See Matter of A-*, 2 I&N Dec. at 813-814.

The Applicant states that he entered the United States in 1960, at the age of 10 years and was continuously physically present in the United States for at least 5 years before turning 28 years old, and that he therefore meets the retention requirement in former section 301(b) of the Immigration and Nationality Act, as originally enacted in 1952. The record supports this statement and shows that the Applicant has been residing in the United States since 1960, and that he thereafter was "more likely than not" continuously physically present in the country for at least 5 years before turning 28 years of age in 1978.

The Applicant's U.S passport contains an entry stamp, which reflects that he was admitted to the United States in April 1960, at the age of 10 years. The evidence also includes the Applicant's Social Security Statement, which shows that he reported income in the United States every year during the 10-year period from 1968 through 1978. In addition, the Applicant submitted a copy of his California driver's license issued in 1968, evidence of his monthly loan payments from September 1969 through September 1973, a copy of insurance policies he obtained in 1970 and 1972 while employed with the same Nevada company, and his 1972 Selective Service Registration card. As there is nothing in the record to suggest that the Applicant was absent from the United States for one year or more in the aggregate at any time during the 1968-1978 period, we conclude that the evidence considered in its totality is sufficient to establish that the Applicant complied with the 5-year continuous U.S. physical presence requirement in former section 301(b) of the Immigration and Nationality Act for retention of U.S. citizenship he acquired at birth.

III. CONCLUSION

The Applicant has met his burden of proof to establish that he acquired U.S. citizenship at birth from his U.S. citizen father, and that he thereafter complied with the requirements to retain his citizenship. The Applicant therefore is eligible for issuance of a Certificate of Citizenship.

ORDER: The appeal is sustained.