U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27464396

Date: JULY 19, 2023

Appeal of Dallas Field Office Decision

Form N-600, Application for Certificate of Citizenship

The Applicant seeks a Certificate of Citizenship to reflect that he acquired U.S. citizenship at birth from his father under section 301(g) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(g).[1]

The Director of the Dallas Field Office in Irving, Texas denied the Form N-600, concluding that the Applicant did not establish eligibility for a Certificate of Citizenship because he did not provide the requested evidence concerning his father's prior physical presence in the United States.[2] The matter is now before us on appeal.

On appeal, the Applicant asserts he did not receive a request for such evidence,[3] and submits additional documents to establish that his father had the physical presence in the United States required for transmission of 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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

The Applicant was born in [redacted] 1994 in [redacted] Mexico to unmarried parents. His father, who is a U.S citizen born in the United States in 1948, and his mother, who is a citizen of Mexico, jointly registered the Applicant's birth before a local civil registry official in September 1994. The

[1] As amended by Act of November 14, 1986, Pub. L. No. 99-653, 100 Stat. 3655.

[2] In the denial, the Director incorrectly referenced the provisions of current section 320 of the Act, 8 U.S.C. § 1431, which provides for derivative citizenship of children who have at least one U.S. citizen parent and are residing in that parent's legal and physical custody as lawful permanent residents while under the age of 18 years. The error does not affect our de novo review on appeal.

[3] While the denial indicates that a request for evidence (RFE) was issued on April 25, 2022, the record before us does not contain a copy of that RFE, nor does it indicate that an RFE was issued at any time before the Applicant's Form N-600 was denied.

Applicant's father subsequently filed an immigrant visa petition on his behalf and in May 2017, at the age of 22 years the Applicant was admitted to the United States as a lawful permanent resident child of a U.S. citizen (IR-2).[4]

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 1994, section 301(g) of the Act as in effect since 1986 governs his citizenship claim. Section 301(g) of the Act provides in relevant part that a person born outside of the United States of parents one of whom is a noncitizen and the other a U.S. citizen will be a national and citizen of the United States at birth if the person's U.S. citizen parent "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 . . . ." However, a person who like the Applicant was born to an unmarried U.S. citizen father, may acquire citizenship from the father only if certain legitimation requirements set forth in section 309(a) of the Act, 8 U.S.C. § 1409(a), are also met; specifically, 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).

[4] The Applicant does not claim that he derived U.S. citizenship from his father and, as the record shows he was over the age of 18 years old when he was lawfully admitted to the United States for permanent residence he does not meet the age requirement for derivative citizenship in section 320 of the Act referenced above.

As stated, the Director determined that the Applicant did not provide evidence that his father was physically present in the United States for the requisite five-year period before the Applicant's birth in 1994, and that at least two of those years were after the father's 14th birthday in 1962. To overcome this determination, the Applicant submits his father's social security earnings statement including the time period from 1967 through 1990, a copy of the father's 1989 divorce decree issued by a U.S. court, and copies of correspondence sent to his father's [redacted] Kansas address in 1992 and 1993. Regarding the paternity and other conditions in section 309(a) of the Act, the record contains the previously provided father's U.S. birth certificate, and the Applicant's timely-registered birth certificate identifying his father. In addition, the Applicant now submits a religious certificate from Mexico, which includes his father's name, as well as his Mexican medical and school records listing his father as his parent/guardian.

Because it does not appear that the Director considered this evidence before forwarding the appeal to our office, we will return the matter to the Director to determine in the first instance whether it is sufficient to establish that the Applicant's father had the requisite prior physical presence in the United States and, if so, whether the father also satisfied the blood relationship, U.S. nationality, financial support,[5] and legitimation or paternity requirements in section 309(a) of the Act to transmit his citizenship to the Applicant at birth. The Director may request any additional evidence deemed necessary to make those determinations and to enter a new decision on the Applicant's citizenship claim.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

[5] U.S. Citizenship and Immigration Services interprets the phrase "has agreed in writing to provide financial support" in section 309(a)(3) of the Act to mean that there must be documentary evidence to supports a finding that the father accepted the legal obligation to support the child until the age of 18 years. *See generally* 12 *USCIS Policy Manual* H.3(C)(2), https://www.uscis.gov/policy-manual (listing examples of evidence that may satisfy this requirement). A written agreement of financial support may come in different forms and documents, including a written voluntary acknowledgement of a child in a jurisdiction where there is a legal requirement that the father provide financial support. *Id.*