U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22976264

Date: MARCH 1, 2023

Appeal of New York, New York Field Office Decision

Form N-600, Application for a Certificate of Citizenship

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

The Director of the New York, New York Field Office denied the Form N-600, concluding that the Applicant did not establish she acquired citizenship at birth under section 301(g) of the Act because she did not submit sufficient evidence of her father's prior physical presence in the United States. The Director further found that the Applicant also did not derive citizenship from her father after birth under section 320 of the Act, 8 U.S.C. § 1431, because she did not show she resided with her father in the United States "during the relevant period in which she could derive citizenship." The matter is now before us on appeal.

On appeal, the Applicant submits additional evidence and renews her claim of U.S. citizenship at birth under section 301(g) of the Act.[1]

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 the Dominican Republic in [redacted]2005 to unmarried parents. Her father was born in the Dominican Republic in [redacted]1959, but subsequently emigrated to the United States and naturalized as a U.S. citizen in 1996. Her mother is a noncitizen. The Applicant's parents married in the Dominican Republic in 2016, when she was 11 years old.

[1] As the Applicant does not contest the Director's adverse determination concerning her eligibility for derivative citizenship under section 320 of the Act, we will not address this issue on appeal. *See e.g.*, *Rizk v. Holder*, 629 F.3d 1083, 1091 n.3 (9th Cir. 2011) (finding that issues not raised in a brief are deemed waived).

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 2005, current section 301(g) of the Act in effect since November 14, 1986, governs her citizenship claim. Section 301(g) of the Act provides in relevant part that a child born abroad to one noncitizen and one U.S. citizen parent will be a national and citizen of the United States at birth if the 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."

A child, who like the Applicant was born out of wedlock to a U.S. citizen father may acquire citizenship under section 301(g) of the Act only if certain additional requirements set forth in section 309(a) of the Act, 8 U.S.C. § 1409(a), are also met; specifically:

> (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, she is presumed to be a noncitizen and bears the burden of establishing her 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 her citizenship claim is "probably true," or "more likely than not." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

II. ANALYSIS

The issue on appeal is whether the Applicant has demonstrated that her father was physically present in the United States for five years before [redacted] 2005 and that at least two of those years were after his 14th birthday in [redacted] 1973.

The Director determined generally that the evidence, which included the father's Certificate of Naturalization, as well as copies of his Forms W-2, Wage and Tax Statements and federal income tax

returns for the years 1993, 1995, 1999, 2000, 2001, and 2002 was insufficient to establish that the father met the overall U.S. physical presence requirement because it was only one type of evidence.

To overcome this determination the Applicant submits an abstract of her father's 1988-2004 driving record from the State of New York Department of Motor Vehicles, as well as his apartment registration information document issued by the Division of Housing and Community Renewal of the State of New York. This supplemental documentation, when considered with the previously provided evidence is sufficient to show that the Applicant's father was physically present in the United States for the requisite five-year period before her birth abroad in [redacted] 2005.

The father's driving record reflects a history of traffic violations from [redacted] 1988 through [redacted] 1995, and indicates that the father lived at the same residential address in New York during that period. In addition, according to the apartment registration document the father leased an apartment at that particular address and was the sole tenant there from March 1992 through 2006. The father's earning and tax documents, in turn indicate that he lived in New York and was employed at a bakery for a total of six years: three years in the 1990s, and three years in the early 2000s. We also note that the father's Certificate of Naturalization similarly shows he was a New York resident when he became a U.S. citizen in April 1996.

This evidence considered in its totality is sufficient to show that the Applicant's father resided in New York for at least 17 years before her birth (1988 to 2005) and that during that period he "more likely than not" was actually physically present there for at least five years in the aggregate. The Applicant therefore has met her burden of proof to show that her father satisfied the overall five-year U.S. physical presence requirement before her birth in 2005, with at least two of those years occurring after her father's 14th birthday in 1973.

Consequently, the Applicant has overcome the sole ground for the denial of her citizenship claim under section 301(g) of the Act, and we withdraw the Director's adverse determination concerning her father's prior physical presence in the United States.

To prevail on her citizenship claim, however, the Applicant must also demonstrate that she meets the additional requirements in section 309(a) of the Act, including blood relationship, paternity acknowledgment or legitimation, and her father's financial support agreement.[2]

Because the Director's decision does not include any findings on those issues, we will remand the matter for the Director to determine in the first instance whether the Applicant satisfies the conditions in section 309(a) of the Act. The Director may request any additional evidence deemed necessary to make this determination 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.

[2] We note that some of those requirements must be satisfied before the Applicant turns 18 years of age.