U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25033970

Date: MAR. 20, 2023

Appeal of El Paso, Texas 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 to section 301(g) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(g). The Director of the El Paso, Texas Field Office denied the application, concluding that the Applicant had not established a blood relationship with her U.S. citizen father, did not submit a copy of her father's divorce certificate, and did not show that her father agreed in writing to provide her financial support until she reached 18 years of age. The matter is now before us on appeal. 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.

As an initial matter, the record indicates that the Applicant currently resides in Haiti. The Secretary of Homeland Security has jurisdiction over the administration and enforcement of the Act within the United States. *See* section 103(a)(1) of the Act, 8 U.S.C. § 1103(a)(1). A citizenship claim made by an individual physically present outside of the United States may only be properly made before the U.S. Department of State (DOS) through a consular officer. Section 104(a) of the Act, 8 U.S.C. § 1104(a), provides, in pertinent part, that the "Secretary of State shall be charged with the administration and the enforcement of the provisions of this [Act] and all other immigration and nationality laws relating to . . . (3) the determination of nationality of a person not in the United States." While the Form N-600 instructions do not specifically preclude the filing of Form N-600 by applicants outside of the United States, sections 103(a)(1) and 104(a)(3) of the Act indicate that the Secretary of State has jurisdiction over claims of U.S. citizenship made by persons who are abroad, while the Secretary of Homeland Security has jurisdiction over the administration and enforcement of the Act within the United States. Accordingly, USCIS lacks authority to consider the Applicant's citizenship claim while she resides outside the United States.

However, because the Director denied the application on the merits, we will address that decision. The Applicant was born in Haiti to a U.S. citizen father and a noncitizen mother who have never been married to each other. She claims that she acquired citizenship from her father at the time of her birth in [redacted] 1993 pursuant to section 301(g) of the Act, which provides in pertinent part that a child

born abroad to one U.S. citizen and one noncitizen parent would acquire U.S. citizenship if the child's U.S. citizen parent was physically present in the United States for five years before the child's birth, at least two of which occurred after the parent reached the age of 14. Additionally, the child may acquire citizenship from the father only if certain paternity and legitimation requirements set forth in section 309(a) of the Act, 8 U.S.C. § 1409(a), are met.

The Director denied the application in part because the Applicant had not provided a copy of her father's divorce decree to show the legal termination of his prior marriage,[1] and that she had not submitted evidence that her father had agreed in writing to provide her financial support until she reached the age of 18 years, as required by section 309(a)(3) of the Act. However, the record contains a birth certificate issued in Haiti when the Applicant was 11 years old, showing that the Applicant's father appeared in person and made a personal declaration that the Applicant was his "natural daughter." Haitian law indicates that "[f]iliation creates a set of moral and financial rights and obligations on the part of parents and their children." Law on Paternity, Maternity, and Filiation, Article 1, Jun. 14, 2014 (Republic of Haiti) (amending Article 1 of Decree of January 27, 1959); *Matter of Mesias*, 18 I&N Dec. 298 (BIA 1982) (acknowledging that Article 1 of Decree of January 27, 1959 "states that natural filiation crated the same rights and obligations created by legitimate filiation . . . ."). Accordingly, the evidence is sufficient to show that the Applicant's father made a written voluntary acknowledgement of the Applicant as his child in a jurisdiction where he was legally required to provide her with financial support. 12 *USCIS Policy Manual* 3.C(1), https://www.uscis.gov/policy-manual. Therefore, she meets the requirement under section 309(a)(3) of the Act.

The Director also stated the Applicant did not submit the results of a DNA test[2] and therefore did not establish a blood relationship with her father, as required under section 309(a)(1) of the Act. On appeal, the Applicant submits the results of a DNA test establishing paternity. As the Applicant has provided new evidence that the Director has not had the opportunity to review, we will remand the matter to the Director to consider this evidence in the first instance and enter a new decision.

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

[1] It is unclear why a copy of the Applicant's father's divorce certificate is necessary. The Applicant is not claiming to have derived citizenship through a U.S. citizen father who was married to her mother, and she may meet the requirements of section 309(a) by showing either legitimation, acknowledgement of paternity in writing under oath, or court adjudication of paternity while she was under 18 years of age. Section 309(a)(4)(A)-(C).

[2] In cases where primary and secondary evidence are insufficient, USCIS may suggest DNA testing to support a claimed biological family relationship. However, submission of DNA evidence is voluntary. 1 *USCIS Policy Manual* E.6(B), n. 20.