U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26609800

Date: MAY 17, 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 acquired U.S. citizenship from his mother under section 309(c) of the Act, 8 U.S.C. § 1409(c).

The Director of the Los Angeles, California Field Office denied the application, concluding that the Applicant did not establish that his mother was the U.S. citizen he had named on the Form N-600, and that the claimed U.S. citizen parent was physically present in the United States for a continuous period of at least one year prior to the Applicant's birth, as required by the statute. We dismissed the appeal, concluding that the Applicant had not shown that his mother was the U.S. citizen he listed on the Form N-600. We reserved the issue as to whether he had shown that his claimed U.S. citizen parent had the requisite U.S. physical presence prior to the Applicant's birth.[1] The matter is now before us on a combined motion to reopen and reconsider. Upon review, we will dismiss the 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 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). We may grant a motion that meets these requirements and establishes eligibility for the benefit sought.

Birth certificate evidence shows that the Applicant was born in Brazil in [redacted]1978. According to the Applicant, he was born out of wedlock to a Brazilian father and a U.S. citizen mother.

As discussed in our prior decision on appeal, incorporated here by reference, 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) (internal quotation marks and citation omitted). As the Applicant

[1] As will be discussed, even if the Applicant had shown that F-C-T-, a U.S. citizen, is his mother as he claims, he has not shown that F-C-T- had the requisite physical presence in the United States prior to the Applicant's birth, as required by section 309(c) of the Act.

claims that he was born out of wedlock to a U.S. citizen mother in Brazil in [redacted] 1978, his citizenship claim falls within the provisions of section 309(c) of the Act, which provides, in pertinent part:

> [A] person born, after December 23, 1952, outside the United States and out of wedlock, shall be held to have acquired at birth the nationality status of his mother, if the mother had the nationality of the United States at the time of such person's birth, and if the mother had previously been physically present in the United States or one of its outlying possessions for a continuous period of one year.

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). The "preponderance of the evidence" standard requires that the record demonstrate that the Applicant's claim is "probably true," based on the specific facts of his case. *Matter of Chawathe,* 25 I&N Dec. 369, 376 (AAO 2010).

II. ANALYSIS

The Applicant stated on his Form N-600 that his biological mother is a U.S. citizen named F-C-T- who was born in California in [redacted] 1961. As evidence in support of the Form N-600, the Applicant included a birth certificate showing that he was born in Brazil in [redacted] 1978 to F-C-T- and a father named F-R-S-; however, the birth certificate was issued in 2017 and stated that the name of the mother had been amended to F-C-T- based on a court order. The Applicant also provided a copy of his 2015 marriage certificate, which listed his mother as a different individual, M-de L-C-. In addressing this discrepancy, he claimed that F-C-T- is his biological mother and that M-de L-C- is his foster mother. However, from at least 1978 until issuance of the 2017 birth certificate, the Applicant's own documents indicated that his mother was M-de L-C-.

On appeal, the Applicant provided a May 2022 deoxyribonucleic acid Test Report (DNA report) that he claimed establishes F-C-T- is his biological parent. As discussed in our prior decision, although the DNA report states that there is a greater than 99% probability that an individual with the Applicant's name is the biological child of an individual identified as "F-C-," 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. We also noted that the Applicant's administrative record includes other documentation that M-de L-C- is his mother (and listing different fathers), namely: (1) a Brazilian birth certificate that he had submitted to support a 2016 Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, showing that his mother is M-de L-C- and that his father is F-R-S-; (2) a 2019 Form I-877, Record of Sworn Statement, in which the Applicant attested that his father is a U.S. citizen named J-F-R- and that his mother is M-de L-C-; (3) a 2019 statement from M-de L-C- asserting that she is the Applicant's biological mother; and (4) a second Brazilian birth certificate reflecting that J-F-R and M-de L-C- are the Applicant's parents.

Finally, we noted that the Applicant's evidence regarding the identity of his mother includes a school transcript showing that F-C-T- was attending [redacted] High School during the 1976 – 1977 and 1977 – 1978 academic school years, even though the Applicant in his Form N-600 and F-C-T- in a 2020 affidavit to the U.S. Department of State both stated that F-C-T- was not in the United States from November 1976 to August 1978, a period of nearly two years that included the Applicant's birth

in Brazil in [redacted]1978. Based on the unresolved contradictory information in the record regarding the identity of his mother, we concluded that the Applicant did not establish that he was the biological child of F-C-T-, his claimed U.S. citizen mother.

On motion to reopen, the Applicant now provides a second copy of the 2022 DNA report and a March 2023 attestation from the Laboratory Director of DDC/DNA Diagnostics Center in Ohio, the DNA testing company that prepared the 2022 DNA report, who asserts among other things that an employee or representative of the company made the relevant records or transmitted the relevant information, and that the records provided are originals or exact copies. The Applicant further contends that that our appellate decision should be reconsidered because our assessment of the 2022 DNA report was not in accordance with U.S. Citizenship and Immigration Services (USCIS) policy. He includes a copy of a 2008 USCIS policy memorandum providing guidance to USCIS officers on DNA test results and contends that "USCIS policy dictates parentage is established by DNA test results." *See generally* USCIS Policy Memorandum PM-AD07-25, *Genetic Relationship Testing: Suggesting DNA Tests Revisions to the Adjudicator's Field Manual (AFM) Chapter 21*(Mar. 19, 2018). However, the memorandum does not support the Applicant's claim regarding the weight of the evidence we must give to DNA test results because it states that "DNA test results do not guarantee approval of a petition." Moreover, Department of Homeland Security (DHS) records now show that the 2022 DNA test results do not appear to relate to the Applicant. The 2022 DNA report resubmitted on motion now includes photographs of an individual purporting to be the Applicant and his California driver's license that were taken to document that his identity was verified when he purportedly provided his DNA materials; however, the photograph is of an individual other than the Applicant and does not match his photographs in DHS.[2] Consequently, the Applicant has not shown on motion any legal or factual error in our prior decision finding that the 2022 DNA report was not sufficient to overcome the many discrepancies in the record relating to his parentage and establish that his biological mother is the U.S. citizen named F-C-T-, and his new evidence on this motion to reopen relating to the DNA report likewise does not resolve those discrepancies.

The Applicant also does not address the remaining discrepancies we noted in our prior decision with regard to his parentage, as the lack of probative information about the identities of the individuals who provided DNA materials for the 2022 DNA report was not the sole or even primary basis for our dismissal of the appeal. As discussed above, from approximately 1978 until he obtained the 2017 birth certificate, the Applicant claimed that his mother was M-de L-C-. Although the 2017 birth certificate reflects that his mother is named F-C-T-, 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). On motion, the Applicant provides a clearer copy of F-C-T-'s high school transcript, but claims that this document is intended to support his claim that F-C-T- has the requisite physical presence in the United States to satisfy section 309(c) of the Act physical presence requirements. As discussed above and in our prior decision, regardless of his intent in proffering the document, the information on the school transcript, along with the other discrepancies in the record regarding his parentage, also undermines the

[2] The record reflects that DHS notified the Applicant of this derogatory information in April 2023 in the context of his bond hearing before the Immigration Court. *See* U.S. DEPARTMENT OF HOMELAND SECURITY'S SURRESPONSE TO THE RESPONDENT'S REPLY TO DEPARTMENT OF HOMELAND SECURITY'S OPPOSITION TO RESPONDENT'S MOTION FOR REDETERMINATION OF BOND (Apr. 3, 2023).

Applicant's assertion that F-C-T- is his biological mother because it reflects that F-C-T- was attending school in [redacted] during certain periods that the Applicant claimed she was residing in Brazil, including his [redacted] 1978 date of birth in Brazil. The Applicant does not address or include any new evidence on motion to explain or resolve the multiple discrepancies in parental information on his birth certificates and F-C-T-'s claimed periods of residence in Brazil, as discussed in our appellate decision. Consequently, he has not established any error in our prior decision to warrant reconsideration and the new evidence he submits is not sufficient to establish his eligibility and show that our prior decision should be reopened.

III. CONCLUSION

We previously concluded that the Applicant did not establish that his mother is the U.S. citizen he named on the Form N-600 because of numerous unresolved contradictions in his evidence, including 2022 DNA test results. On motion, the Applicant has not shown that our conclusion that the DNA test results did not establish a biological parent-child relationship with F-T-C- was erroneous under applicable law or policy or based on the record at the time. In addition, the new evidence he submits on motion does not show that he has a U.S. citizen mother through whom he acquired U.S. citizenship pursuant to section 309(c) of the Act. Consequently, reopening of these proceedings and reconsideration of our prior adverse decision is not warranted. The Applicant's request for a Certificate of Citizenship therefore remains denied.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.