U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26489063

Date: MAY 17, 2023

Appeal of Harlingen, Texas 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 father under former section 301(a)(7) of the Act, 8 U.S.C. § 1401(a)(7).[1] The Director of the Harlingen, Texas Field Office denied the application, concluding that the record did not establish that the Applicant's father met the physical presence requirements for transmission of U.S. citizenship. The matter is now before us on appeal. 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-Larios*, 24 I&N Dec. 467, 468 (BIA 2008). 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 dismiss the appeal.

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. *Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1029 n.3 (9th Cir. 2001). For an individual claiming to be a U.S. citizen at birth, and who was born to married parents between December 24, 1952, and prior to November 14, 1986, the individual must have been born to a U.S. citizen parent, and prior to the birth of the individual that parent must have been physically present in the United States or its outlying possessions for 10 years with at least five years occurring after the age of 14. Section 301(a)(7) of the Act.

The record reflects that the Applicant was born in Mexico on [redacted] 1968, to a U.S. citizen father, P.E.C.[2] who was born in 1920 and was married at the time of the Applicant's birth. The Director determined, however, that the record did not establish that P.E.C. was physically present in the United States for 10 years prior to the Applicant's birth, at least five of which occurred after the age of 14. Specifically, the Director noted that P.E.C.'s social security earnings record showed only eight years of employment in the United States, and that three affidavits submitted in support of the application lacked precise details about where P.E.C. lived and worked or the exact dates when he was present in

[1] Section 301(a)(7) of the Act was redesignated as section 301(g) of the Act, 8 U.S.C. § 1401(g), by Act of October 10, 1978, Pub. L. 95-432, 92 Stat. 1046. The decision indicates that the Director considered the Applicant's citizenship claim under the provisions of former section 301(g) of the Act; however, at the time the Applicant was born former section 301(a)(7) was in effect. The error does not affect our adjudication on appeal, as the physical presence requirements under former sections 301(a)(7) and 301(g) of the Act are the same and did not change until former section 301(g) was amended in 1986.

[2] Initials are used to protect the individual's privacy.

the United States. On appeal, the Applicant claims that the Director misapplied caselaw, that the record establishes his father met the requisite physical presence requirements, and that the Director did not allow for an interview where he could have provided additional information.

In his Form N-600, the Applicant claimed his father was physically present in the United States from 1935 until 1967. As noted in the Director's decision, which we incorporate herein, the Applicant submitted a copy of P.E.C's Form N-600 that he used to establish his own citizenship, P.E.C.'s social security earning record for the years between 1940 and 1955, a copy of P.E.C.'s social security card bearing a 1939 issuance date, and three statements from P.E.C's relatives as evidence to establish his father's physical presence. On appeal the Applicant submits a brief.

We have reviewed the evidence and for the reasons explained below we agree with the Director that the evidence remains insufficient to show that the Applicant's father, who was born in 1920, satisfied the 10-year physical presence requirement under former section 301(a)(7) of the Act.

Initially, we note that P.E.C.'s Form N-600 states that his father (the Applicant's grandfather) resided in the United States, in pertinent part, from 1938 to 1965, and that the social security earnings records reflect that P.E.C. had earnings in the United States in the years 1940, 1941, 1943, 1949, 1952, 1953, 1954, and 1955. The Applicant claims this evidence indicates that P.E.C. would have been living with his father during the same period from 1938 to 1965, and by extension from 1935 until 1967 as claimed.

The fact that P.E.C.'s father was living in the United States combined with his intermittent earnings record, however, does not establish by a preponderance of the evidence that he was physically present in the United States for the required time period.

P.E.C.'s earnings between 1940 and 1955 do not reflect continuous work within those individual years or throughout and are therefore insufficient to determine what actual physical presence was associated with the periods of employment. For example, P.E.C. had earnings in the second quarter of 1940; the fourth quarter of 1941; the third quarter of 1943; the fourth quarter of 1949; the fourth quarter of 1952; the second, third, and fourth quarters in 1953; the first, third, and fourth quarters in 1954; and the second quarter of 1955. But the significant gaps in earnings, including approximately one year between his earnings in 1940 and 1941, another two years between 1941 and 1943, six years between 1943 and 1949, and three years between 1949 and 1952, reflect that his physical presence in the United States during these years may not have been continuous. Additionally, even if we gave a full year of credit to each year that P.E.C. had reported income in the United States, as done by the Director, it would amount to only eight years, which is less than the required 10 years.

Finally, the affidavits provided by P.E.C.'s relatives lack sufficient detail, or first-hand knowledge, to establish he was physically present in the United States for 10 years prior to the Applicant's birth. One affiant stated that P.E.C. was living in Texas in September 1939, which predates the affiant's birth and instead is based on information his father told him. The same affiant stated that he remembered P.E.C. from a visit to Texas that he made in 1957. Another affiant stated only that she heard P.E.C. came to the United States when he was very young. And while a third affiant claims that he lived in [redacted] Texas until 1967 and that P.E.C. lived with him, he stated that he could not remember the specific times. Although the information in these affidavits indicate P.E.C. may have

been physically present in the United States prior to 1968, even when considering this information with the earnings information discussed above, the information does not provide sufficient detail, or consistent first-hand information, about where and for how long P.E.C. lived or was employed, or the amount of time he was actually physically present in the country. As such, the record is insufficient to establish that P.E.C. was present in the United States for a total of 10 years prior to 1968, with 5 of them after P.E.C. turned 14, as is required for him to transmit U.S. citizenship to the Applicant under former section 301(a)(7) of the Act.

Lastly, the Applicant claims it was improper for the Director to issue a decision without interviewing the Applicant or any witnesses. An application for a Certificate of Citizenship, however, may be processed without an interview. *See* 8 C.F.R. § 341.2(a). And a witness shall be called to testify only if that person's testimony is needed and if alternative proof is unavailable. 8 C.F.R. § 341.2(b). Accordingly, the Director was not required to interview either the Applicant or any witnesses.

In these proceedings, the burden is on the Applicant to prove that he is a U.S. citizen, which requires him to demonstrate by a preponderance of the evidence that his father had enough physical presence in the United States to transmit his citizenship to the Applicant at the time of his birth. The Applicant has not met this burden and he is therefore ineligible for a Certificate of Citizenship.

ORDER: The appeal is dismissed.