U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19855246

Date: MAY 11, 2022

Appeal of Los Angeles County Field Office Decision

Form N-600, Application for Certificate of Citizenship

The Applicant seeks a Certificate of Citizenship to reflect that he derived U.S. citizenship from his mother under section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The Director of the Los Angeles County Field Office denied the Form N-600, Application for Certificate of Citizenship (Form N-600), concluding that the Applicant did not establish he automatically derived citizenship from his naturalized U.S. citizen mother pursuant to section 320 of the Act because he was not residing in the United States in her legal and physical custody during the statutory period prior to his eighteenth birthday, as required.

The matter is now before us on appeal. The Applicant claims that the Director's decision was erroneous and submits additional evidence. We review the questions in this matter *de novo*. *See Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will dismiss the appeal.

I. LAW

The applicable law for derivative citizenship purposes is "the law in effect at the time the critical events giving rise to eligibility occurred." *See Minasyan v. Gonzales*, 401 F.3d 1069, 1075 (9th Cir. 2005). In the present matter, the Applicant was born in the Philippines in [redacted] 2001, to married foreign national parents. The Applicant's parents divorced in [redacted] 2007, his mother became a U.S. citizen in May 2016, and he was admitted to the United States as a lawful permanent resident (LPR) in April 2017. Accordingly, section 320 of the Act, as amended by the Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000) (CCA), which is effective after February 27, 2001, applies to his case.

The CCA repealed former section 321 of the Act and amended, in part, former section 320 of the Act. The amendments to section 320 of the Act took effect on February 27, 2001, and apply to individuals who satisfy the requirements of section 320 of the Act, as in effect on that date. *Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153, 157 (BIA 2001).

Section 320 of the Act, as amended in February 2001 and currently in effect, provides that:

(a) A child born outside of the United States automatically becomes a citizen of the United States when all of the following conditions have been fulfilled:

(1) At least one parent of the child is a citizen of the United States, whether by birth or naturalization.

(2) The child is under the age of eighteen years.

(3) The child is residing in the United States in the legal and physical custody of the citizen parent pursuant to a lawful admission for permanent residence.

Moreover, applicants must meet the definition of a "child" in section 101(c)(1) of the Act, 8 U.S.C. § 1101(c)(1), which defines the term "child" in pertinent part to mean "an unmarried person under twenty-one years of age and includes a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in the United States or elsewhere[.]" The applicant must have either a biological or legal adoptive relationship with the claimed U.S. citizen parent. *See Matter of Guzman-Gomez*, 24 I&N Dec. 824, 826 (BIA 2009) (determining that "child" as defined under section 101(c) of the Act encompasses biological or legal adoptive children, but not stepchildren). A child born in wedlock is considered to be a legitimate child. *See Matter of Kubicka*, 14 I&N Dec. 303, 304 (BIA 1972) ("A 'legitimate' child is, of course, a child 'born in wedlock' . . . .") (quoting Webster's New Dictionary, 1971).

The regulation at 8 C.F.R. § 320.1 defines "legal custody" as "refer[ring] to the responsibility for and authority of child." It further provides that, for purposes of the CCA, U.S. Citizenship and Immigration Services (USCIS) will presume that a U.S. citizen parent has legal custody of child, and will recognize that U.S. citizen parent as having lawful authority over the child, absent evidence to the contrary, in the case of:

(i) A biological child who currently resides with both natural parents (who are married to each other, living in marital union, and not separated),

(ii) A biological child who currently resides with a surviving natural parent (if the other parent is deceased), or

(iii) In the case of a biological child born out of wedlock who has been legitimated and currently resides with the natural parent.

8 C.F.R. § 320.1 further provides that, in the case of a child of divorced or legally separated parents, that the agency will:

> [F]ind a U.S. citizen parent to have legal custody of a child, for the purpose of the CCA, where there has been an award of primary care, control, and maintenance of a minor child to a parent by a court of law or other appropriate government entity pursuant to the laws of the state or country of residence. The Service will consider a U.S. citizen parent who has been awarded "joint custody," to have legal custody of a child. There

> may be other factual circumstances under which [USCIS] will find the U.S. citizen parent to have legal custody for purposes of the CCA.

Generally, to derive U.S. citizenship, a foreign-born child must satisfy certain statutory conditions before turning 18 years of age. A child's acquisition of citizenship on a derivative basis occurs by operation of law and not by adjudication. *Matter of Fuentes-Martinez*, 21 I&N Dec. 893, 896 (BIA 1997). Thus, a child who satisfies requisite conditions will derive U.S. citizenship automatically, even though the actual determination of derivative citizenship may occur after the fact, in the context of a passport application or a claim to citizenship. *Id.*

Applicants born abroad are presumed to be foreign nationals and bear the burden of establishing their claim to U.S. citizenship by a preponderance of credible evidence. *See Matter of Baires-Larios*, 24 I&N Dec. 467, 468 (BIA 2008). The "preponderance of the evidence" standard requires that the Applicant establish that their claim is "probably true," based on the specific facts of their case. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (citing *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989)).

II. ANALYSIS

The Applicant is seeking a Certificate of Citizenship indicating that he derived U.S. citizenship from his U.S. citizen mother. The Applicant was born in the Philippines in [redacted] 2001, to married foreign national parents. The Applicant's parents divorced in [redacted] 2007, in the state of Nevada, while the Applicant remained in the Philippines. The Applicant's mother became a U.S. citizen through naturalization in May 2016 and the Applicant was admitted to the United States as an LPR on April 12, 2017.

The record reflects that the Applicant has established that he meets several requirements for derivative citizenship under section 320 of the Act. Specifically, birth and marriage certificates show the biological parent-child relationship between the Applicant and his mother (and father), that he was born abroad, and that he remained under 18 years of age through [redacted] 2019. Further, the Applicant's mother naturalized in May 2016, when he was 15 years old, and the Applicant was admitted to the United States as an LPR in April 2017, when he was 16 years old. Therefore, the Applicant qualifies as his mother's "child" under section 101(c) of the Act and satisfies the requirements of section 320(a)(1) and (2) of the Act. At issue is whether the Applicant has shown that he resided in the United States in the legal and physical custody of his U.S. citizen mother between April 12, 2017, the date he was admitted as an LPR, and [redacted] 2019, his 18th birthday.

A. Residence in the United States in the Legal Custody of the U.S. Citizen Parent

As stated above, the regulations provide that legal custody "refers to the responsibility for and authority over a child." 8 C.F.R. § 320.1. Under the regulation, legal custody is presumed "in the case of a child of divorced or legally separated parents . . . where there has been an award of primary care, control, and maintenance of a minor child to a parent by a court of law or other appropriate government entity pursuant to the laws of the state or country of residence." 8 C.F.R. § 320.1(2). The regulation further provides that USCIS "will consider a U.S. citizen parent who has been awarded 'joint custody,' to have legal custody of a child." *Id.*

The [redacted] 2007 Decree of Divorce submitted by the Applicant in this case, issued by the District Court, Family Division in [redacted], Nevada, does not contain a determination concerning legal custody or parental responsibility over the Applicant. Specifically, it states that "the habitual residence of the minor child[] of the parties is in the Republic of the Philippines and this Court has no jurisdiction to make orders concerning the custody of or visitation with the child[]."[1] It further orders that the Applicant's U.S. citizen mother pay child support to his father in the Philippines "for support and maintenance [of] the minor child of the parties, commencing with the date of the filing of this Complaint for Divorce and continuing thereafter, each and every month, until said child reach[es] the age of majority, marr[ies], or become[s] otherwise emancipated." Aside from the Decree of Divorce, the record does not contain any additional evidence to establish that the Applicant's mother at any time obtained an amended court order or was otherwise awarded legal custody over the Applicant.

The regulations at 8 C.F.R. § 320.1 provide that "[t]here may be other factual circumstances under which [USCIS] will find the U.S. citizen parent to have legal custody for the purposes of the CCA." In the absence of a judicial determination or grant of custody in a case of a legal separation of the naturalized parent, as here, the parent having actual, uncontested custody of the child is to be regarded as having "legal custody." *Matter of M-,* 3 I&N Dec. 850, 856 (BIA 1950).

Upon *de novo* review, the Applicant has not established, by a preponderance of the evidence, that he was in the actual, uncontested legal custody of his U.S. citizen mother prior to his 18th birthday. As provided for above, the Decree of Divorce specifically does not address the issue of custody of the Applicant and indicates that the Applicant resided in the Philippines with his father. In his statements submitted below and on appeal, the Applicant indicates that he arrived in the United States as an LPR on April 12, 2017, returned to the Philippines on May 31, 2017, and remained there until after he reached the age of 18. While this indicates that the Applicant was present in the United States as an LPR for approximately six weeks, the record does not contain any additional evidence establishing that the Applicant's mother had actual, uncontested custody of him during that time.

On appeal, the Applicant references, through counsel, section 3010(a) of the California Family Code (Cal. Fam. Code), which states that "[t]he mother of an unemancipated minor child and the father . . . are equally entitled to the custody of the child." Cal. Fam. Code § 3010(a) (West 2022). He asserts that, "by making no custody orders the Nevada divorce decree left intact [the Applicant's] parents' shared legal custody—the default under the law of California where the home of [the Applicant's mother] is located." We acknowledge this provision and its acknowledgment of a mother or father's general right to custody of their child. This provision on its own, however, does not establish that the Applicant's mother in fact had actual, uncontested legal custody of the Applicant during his time in the United States and the Applicant has not submitted any additional evidence of the same on appeal.[2]

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[1] Section 125A.305 (initial child custody jurisdiction) of the Nevada Revised Statutes Annotated (Nev. Rev. Stat. Ann) states, in pertinent part, that "a court of this State has jurisdiction to make an initial child custody determination only if . . . [t]his State is the home state of the child on the date of the commencement of the proceeding." Nev. Rev. Stat. Ann. § 125A.305 (West 2007).

[2] Indeed, the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), codified at section 3400 of the Cal. Fam. Code *et seq.*, provides in relevant part that "a court of this state has jurisdiction to make an initial child custody determination only if . . . [t]his state is the home state of the child on the date of commencement of the proceeding, or was

Moreover, the Applicant's parents were divorced in Nevada in 2007, and at that time, the Applicant resided in the Philippines and the state of Nevada did not have a provision mandating joint legal custody where a custody determination was not made by the court.[3]

B. Residence in the United States in the Physical Custody of the U.S. Citizen Parent

Neither the Act nor the regulations define the term "physical custody." However, "physical custody" has been considered in the context of "actual uncontested custody" in derivative citizenship proceedings and interpreted to mean actual residence with the parent. *See Bagot v. Ashcroft,* 398 F.3d 252, 267 (3rd Cir. 2005) (father had actual physical custody of the child where the child lived with him and no one contested the father's custody); *Matter of M-,* 3 I&N Dec. at 56 (father had "actual uncontested custody" of a child where the father lived with the child, took care of the child, and the mother consented to his custody). Further, section 101(a)(33) of the Act, 8 U.S.C. § 1101(a)(33), defines the term "residence" as "the place of general abode . . . of a person . . . his [or her] principal, actual dwelling place in fact, without regard to intent."

In order to establish that the Applicant resided with his U.S. citizen mother, the record contains a copy of his California Identification Card issued in May 2017, and his U.S. citizen mother's California Driver's License issued in April 2017, both listing the same physical address in [redacted] California. Borrowing from the analysis above, while we acknowledge that the Applicant was present in the United States as an LPR for approximately six weeks, his California Identification Card listing his U.S. citizen mother's address, on its own, is not sufficient to establish that he in fact resided with her during that time. The Applicant does not provide additional documents relevant to actual residence in the physical custody of his U.S. citizen mother on appeal, such as residential, education, employment, medical, or other records.[4] Accordingly, the record does not contain sufficient evidence to establish that his U.S. citizen mother had actual uncontested legal and physical custody over him prior to his 18th birthday, as required.

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the home state of the child within six months before the commencement of the proceeding and the child is absent from this state but a parent . . . continues to live in this state." Cal. Fam. Code § 3421 (West 2022). "Home state" is defined to mean "the state in which a child lived with a parent . . . for at least six consecutive months . . . ." Cal. Fam. Code § 3402(g) (West 2022). As explained above, the Applicant was present in California as an LPR for a period of only six weeks. Further, and as explained below, the record does not include sufficient evidence to establish that the Applicant in fact lived with his mother during that time.

[3] In 2015, approximately seven years after the Applicant's parents' divorce, Chapter 125C of the Nev. Rev. Stat. Ann. was amended to add the following: "If a court has not made a determination regarding the custody of a child, each parent has joint legal custody and joint physical custody of the child until otherwise ordered by a court of competent jurisdiction." Nev. Rev. Stat. Ann. § 125C.0015 (West 2022) (added by 2015 Nevada Law Ch. 445 (A.B. 263)).

[4] The Applicant submitted additional evidence documenting his education in the Philippines, including his high school report cards, SAT Score Reports, and university registration, asserting that the evidence establishes that his time in the Philippines after having entered the United States an LPR was "of specific purpose and fixed end date: graduation from university." We acknowledge this evidence; however, it indicates that the Applicant spent the majority of his time in the Philippines, not the United States, and does not meet his burden of establishing residence in the United States in the legal and physical custody of his U.S. citizen mother between his arrival as an LPR in April 2017 and his 18th birthday in [redacted] 2019.

III. CONCLUSION

The Applicant has not shown that he automatically derived citizenship from his naturalized U.S. citizen mother pursuant to section 320 of the Act because he did not demonstrate that his U.S. citizen mother had actual uncontested legal and physical custody over him at some point between April 2017 and [redacted] 2019. As such, the Applicant is ineligible for a Certificate of Citizenship and his Form N-600 remains denied.

ORDER: The appeal is dismissed.