U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22586596

Date: OCT. 12, 2022

Appeal of Honolulu, Hawaii 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 U.S. citizen mother under section 320 of the Act, 8 U.S.C. § 1341.

The Director of the Honolulu, Hawaii Field Office denied the Form N-600, Application for Certificate of Citizenship (Form N-600), concluding that the Applicant did not establish that he derived U.S. citizenship from his mother because he did not show either that: (1) both of his parents had become U.S. citizens while they were still married, as required by former section 320 of the Act; or (2) he had resided in the legal and physical custody of his U.S. citizen mother pursuant to a lawful admission for permanent residence into the United States at some point during the period after his parents had divorced and before he turned 18 years of age, as required by current section 320 of the Act.

The matter is now before us on appeal. The Applicant claims that the Director's decision was erroneous and submits additional evidence.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

The Applicant seeks a Certificate of Citizenship indicating that he derived U.S. citizenship from his mother. The record reflects that the Applicant was born in South Korea in [redacted] 1984 to married parents and that he subsequently entered the United States as a lawful permanent resident in December 1985. The Applicant submitted a Certificate of Naturalization showing his mother became a naturalized U.S. citizen in April 1993. There is no information to indicate that the Applicant's father is a U.S. citizen. The record shows that, in September 1993, a Form I-407, Abandonment of Lawful Permanent Resident Status (Form I-407), was filed and signed on the Applicant's behalf in the physical presence of a U.S. immigration or consular officer in Seoul, Korea. The Form I-407 indicates that the Applicant had last departed the United States in November 1992, and there is no evidence indicating that the Applicant was ever subsequently admitted to the United States as a lawful permanent resident. The record further reflects that the Applicant's parents divorced in [redacted] 1994.

The Director denied the Applicant's Form N-600, finding that the Applicant was not eligible for a Certificate of Citizenship under former section 320 of the Act because he did not show that both parents naturalized prior to the Applicant turning 18 years of age, as required under that provision.[1] Moreover, the Director concluded that the Applicant was ineligible to derive U.S. citizenship under current section 320 of the Act because the Applicant did not show that he was readmitted to the United States as a lawful permanent resident after he abandoned such status in 1993 or that he had resided in the United States as a lawful permanent resident in the legal and physical custody of his U.S. citizen mother at some point after his parents had divorced and before he turned 18 years of age in 2002.

On appeal, the Applicant asserts that the Director misapplied current section 320 of the Act in adjudicating his Form N-600, and that he had satisfied the statutory eligibility requirements for derivative U.S. citizenship through his mother.

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). The Applicant seeks to establish eligibility under the requirements of section 320 of the Act. The Child Citizenship Act of 2000 (the CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), which took effect on February 27, 2001, amended former section 320 of the Act and repealed former section 321 of the Act, 8 U.S.C. § 1432.[2] The amended provisions of section 320 of the Act apply to individuals who were not yet 18 years old as of February 27, 2001. In the present matter, the Applicant was under 18 years of age on the effective date of the CCA and asserts that he is eligible for derivative citizenship under current section 320; however, all of the critical events for derivative citizenship - his mother's naturalization, and his claim to have resided in the legal and physical custody of his naturalized mother after his admission to the United States for lawful permanent residence – occurred while the Applicant was still under age 18 and prior to the February 2001 effective date the CCA. Therefore, the Applicant's citizenship claim will also be considered under the provisions of former section 321 of the Act.

Former section 321 of the Act provided, in pertinent part, that:

> (a) A child born outside of the United States of alien parents, or of an alien parent and a citizen parent who has subsequently lost citizenship of the United States, becomes a citizen of the United States upon fulfillment of the following conditions:
>
> (1) The naturalization of both parents; or
>
> (2) The naturalization of the surviving parent if one of the parents is deceased; or

[1] The Applicant does not contest, and our review supports, the Director's finding that the Applicant is ineligible for derivative citizenship under former section 320 of the Act.

[2] The Immigration and Nationality Act of 1952 repealed the Nationality Act of 1940 in its entirety, and it enacted derivative citizenship provisions, including former section 321 of the Act. Former section 321 of the Act was effective on December 24, 1952, and it applied to individuals who claimed to meet the conditions therein between that date and February 26, 2001.

(3) The naturalization of the parent having legal custody of the child when there has been a legal separation of the parents or the naturalization of the mother if the child was born out of wedlock and the paternity of the child has not been established by legitimation; and if-

(4) Such naturalization takes place while such child is under the age of 18 years; and

(5) Such child is residing in the United States pursuant to a lawful admission for permanent residence at the time of the naturalization of the parent last naturalized under clause (1) of this subsection, or the parent naturalized under clause (2) or (3) of this subsection, or thereafter begins to reside permanently in the United States while under the age of 18 years.

Section 320 of the Act, as amended by the CCA, provides, in pertinent part, 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.

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. *See 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. *See Matter of Chawathe,* 25 I&N Dec. 369, 376 (AAO 2010).

II. ANALYSIS

A. Current Section 320 of the Act Conditions

The Applicant's citizenship claim will be considered under the amended provisions of section 320 of the Act because he was under the age of 18 years on its effective date. *See Matter of Rodriguez-Tejedor,* 23 I&N Dec. 153 (BIA 2001) (stating that section 320 of the Act, as amended by the CCA, is not retroactive and does not apply to individuals who were over 18 years of age on the February 2001 effective date of the CCA). However, the regulation at 8 C.F.R. § 320.2 specifically provides that the requirements set forth in section 320 of the Act, as amended by the CCA, must "have been met after February 26, 2001." Therefore, in order to show that he derived U.S. citizenship through his naturalized U.S. citizen mother under this provision, the Applicant must establish that at some point

on or after February 27, 2001, and before his eighteenth birthday in [redacted] 2002, he was residing in the United States in the legal and physical custody of his naturalized U.S. citizen mother, pursuant to his lawful admission for permanent resident status. Section 320(a)(3) of the Act.

We acknowledge the Applicant's assertions on appeal that he fulfilled the requirements of current section 320(a)(3) of the Act because he had previously resided in the United States pursuant to a lawful admission for permanent residence while still under 18 years of age and prior to abandoning such status in September 1993. However, as discussed above, the information on the Applicant's Form I-407 reflects that the Applicant departed the United States in November 1992, abandoned his lawful permanent resident status in September 1993, and was not thereafter lawfully admitted into the United States as a lawful permanent resident again prior to his eighteenth birthday in [redacted] 2002. The Applicant therefore has not shown that he "is residing in the United States . . . pursuant to a lawful admission for permanent residence" on or after the effective date of the CCA in February 2001 and before his eighteenth birthday, as required under current section 320 of the Act. *See also* 8 C.F.R. § 320.2. In addition, he also has not shown that he ever resided in the United States "in the legal and physical custody of the *citizen* parent," as the Form I-407 reflects he departed the United States prior to his mother's April 1993 naturalization and the record does not show that he was ever readmitted as a lawful permanent resident and resided in her legal and physical custody at some point after her naturalization. (Emphasis added).

Based on this evidence, the Applicant has not shown that he satisfies current section 320(a)(2) and (3) of the Act conditions requiring that he have resided in the United States in the legal and physical custody of his U.S. citizen mother at some point on or after the date of her naturalization in April 1993 and prior to his 18th birthday, pursuant to his lawful admission as a permanent resident. Thus, the Applicant has not shown that he is eligible for a Certificate of Citizenship under section 320 of the Act.

B. Conditions at Former Section 321 of the Act

The Applicant also has not established that he derived citizenship through his mother under former section 321 of the Act, which was in effect when all the material conditions for derivative citizenship were claimed to have been satisfied. *See Minasyan,* 401 F.3d at 1075; *see also Matter of Sepulveda*, 16 I&N Dec. 161, 618 (BIA 1974) (holding that derivation of citizenship through naturalization of parents is governed generally by the statute in effect on the date the last material condition is fulfilled); *Matter of T* , 7 I& Dec. 679, 680 (BIA 1958).

As the record does not reflect that the Applicant's father is deceased or that the father has become a naturalized U.S. citizen, the Applicant has not shown that he satisfied the conditions for derivative citizenship at former sections 321(a)(1) (requiring the naturalization of both parents) or 321(a)(2) (requiring naturalization of surviving parent where the other is deceased) of the Act. The Applicant must therefore establish derivative citizenship through his mother under the conditions at former sections 321(a)(3), (4), and (5) of the Act by showing that, while he was still under age of 18 years, (1) his parents were legally separated and his mother had legal custody of him, and (2) he was residing in the United States pursuant to a lawful admission for permanent residence when his mother naturalized or that he thereafter began to reside permanently in the United States.

The Applicant's birth certificate, his parents' marriage certificate, the parents' divorce decree, his mother's April 1993 Certificate of Naturalization, his lawful permanent resident card evidence collectively show that he was born outside of the United States to married foreign national parents; he was admitted to the United States as a lawful permanent resident in 1985; he resided in the United States as a lawful permanent resident for some period of time between 1985 and November 1992; and he had a naturalized U.S. citizen parent. Moreover, all of these requirements were satisfied while the Applicant was under the age of eighteen. However, as explained above, the Applicant's Form I-407 reflects that he last departed the United States in November 1992 *before* his mother's April 1993 naturalization and abandoned his lawful permanent resident status in September 1993, and the record does not otherwise show that he was readmitted to the United States as a lawful permanent resident while he was still under the age of 18 years. Consequently, he has not shown that he resided in the United States pursuant to a lawful admission for permanent residence at any time on or after the date of his mother's naturalization and before his eighteenth birthday, as required. He therefore has not satisfied former section 321(a)(5) of the Act conditions for derivative citizenship.

As this basis for denial is dispositive of the Applicant's appeal, we decline to reach and hereby reserve the issues as to whether the Applicant has separately shown that he resided in the sole legal[3] and physical custody of his U.S. citizen mother at some point during the relevant period. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

IV. CONCLUSION

The Applicant has not shown that he automatically derived citizenship from his naturalized U.S. citizen mother under former section 321(a)(5) of the Act because he did not show that he was residing in the United States pursuant to an admission as a lawful permanent resident at any time during the relevant period that began on the date of his mother's April 1993 naturalization and ended when he turned 18 years of age in [redacted] 2002. The Applicant also has not shown that he derived citizenship under current section 320 of the Act as he has not established that he resided in the United States in the legal and physical custody of his U.S. citizen mother pursuant to an admission as a lawful permanent resident at some point after the February 26, 2001 effective date of the CCA, and before his eighteenth birthday in [redacted] 2002. As such, the Applicant is ineligible for a Certificate of Citizenship and his Form N-600 remains denied.

ORDER: The appeal is dismissed.

[3] *U.S. v. Casasola*, 670 F.3d 1023 (9th Cir. 2012) (stating that the custodial parent is required to have sole legal in order to confer derivative citizenship under former section 321 of the Act).