U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23116280

Date: SEPT. 22, 2022

Appeal of San Diego, California 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 former section 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432.[1]

The Director of the San Diego, California Field Office denied the Form N-600, Application for Certificate of Citizenship (Form N-600), concluding that the Applicant was not eligible for a Certificate of Citizenship under former section 321(a)(3) of the Act because the record indicated his father had legitimated him under the laws of California and Jalisco, Mexico.[2]

The Applicant asserts on appeal that his father never legitimated him under the relevant laws of California and Jalisco, Mexico and that he otherwise meets the conditions for deriving citizenship at former section 321(a)(3) of the Act for children born out of wedlock who have not been legitimated. He submits a brief on appeal.

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

I. LAW

The record reflects that the Applicant was born out of wedlock in Mexico in [redacted] 1981, to foreign national parents who never married each other. He subsequently entered the United States without inspection in March 1989 to join his mother. The Applicant's mother became a U.S. citizen through naturalization in September 1996. The Applicant filed a Form I-485, Application to Register Permanent Residence or Adjust Status, in August 1997, while he was 15 years of age, and adjusted his status to that of a lawful permanent resident in 2000, when he was over the age of 18 years. There is no evidence that the Applicant's father is a U.S. citizen, and the Applicant is claiming derivative citizenship solely through his mother.

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[1] Repealed by Sec. 103(a), Title I, Child Citizenship Act of 2000 (CCA), Pub. L. No. 106-395, 114 Stat. 1631 (2000).

[2] The Applicant's history with respect to his Form N-600 is lengthy, as he initially filed it in 2012. It was subsequently denied and he has since filed several motions that have been adjudicated by the Field Office Director. For the sake of brevity, we agree that he has filed a timely appeal of the Director's most recent decision dated February 15, 2022, for purposes of satisfying the regulation at 8 C.F.R. § 103.5(a)(6).

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). Based on the Applicant's year of birth in 1981 and the year that he turned 18 (1999), his derivative citizenship claim falls under the provisions of former section 321 of the Act.[3]

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

> (a) A child born outside of the United States of [foreign national] parents, or . . . [a foreign national] 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:
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> (1) The naturalization of both parents; or
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> (2) The naturalization of the surviving parent if one of the parents is deceased; or
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> (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-
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> (4) Such naturalization takes place while such child is under the age of 18 years; and
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> (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.

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 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

The Applicant meets some of the conditions under former section 321(a) of the Act in support of his claim that he derived U.S. citizenship through his mother while he was under 18 years of age. His birth registration and his mother's Certificate of Naturalization show that his mother became a

[3] The CCA, which took effect on February 27, 2001, amended former sections 320 and 322 of the Act, and repealed former section 321 of the Act. The provisions of the CCA are not retroactive, and the amended provisions apply only to individuals who were not yet 18 years old as of February 27, 2001. Because the Applicant was over the age of 18 in February 2001, he is not eligible for the benefits of the amended Act. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001).

naturalized U.S. citizen in September 1996 when the Applicant was under the age of 18, as required by former section 321(a)(4) of the Act. Although the Applicant's Form I-551 (permanent resident card) shows that he adjusted his status to that of a lawful permanent resident in 2000, he was already over the age of 18 years at the time and therefore does not satisfy the first clause of former section 321(a)(5) of the Act. However, as the Director noted, the U.S. Court of Appeals for the Ninth Circuit, under whose jurisdiction this case arises, has held that applicants who were not admitted for lawful permanent residence until after attaining 18 years of age may nevertheless satisfy former section 321(a)(5) of the Act through an alternative pathway, if the record shows they otherwise met the conditions for U.S. citizenship and "reside[d] permanently in the United States" at the time of the parent's naturalization. *Cheneau v. Garland*, 997 F.3d 916, 922 (9th Cir. 2021) (en banc) (citing *Nwozuzu v. Holder*, 726 F.3d 323 (2d Cir. 2013)). The court concluded that this pathway requires applicants to still demonstrate "objective official manifestation of [their] permanent residence" in the United States, such as applying for adjustment of status before they attain 18 years of age. *Cheneau*, 997 F.3d at 926. The record here contains some evidence that the Applicant was residing in the United States after his mother's naturalization and prior to turning 18 years of age, including school transcripts indicating that the Applicant had a home address within the United States when he entered into the San Diego school system for a short time in May and June of 1989, and then re-entered the same school system in January 1993 until about March 1998. Moreover, consistent with *Cheneau*, the record contains the Form I-485 that the Applicant filed in August 1997, after his mother's 1996 naturalization and while he was still under the age of 18 years, and on which he claimed to be residing at the same U.S. address as his mother. Consequently, the record indicates he satisfies the requirements of the second clause of former section 321(a)(5) of the Act pursuant to *Cheneau*.

Lastly, the Applicant does not claim to have met conditions in former sections 321(a)(1) or (a)(2) of the Act, nor does the Applicant assert he meets the first clause of former section 321(a)(3) of the Act pertaining to legal custody after a legal separation. Instead, the Applicant claims to have satisfied the second clause of former section 321(a)(3) of the Act as a child born out of wedlock who was not legitimated. However, the Director denied the Form N-600, concluding that the record indicated that the Applicant was legitimated by his father under the laws of California and Mexico, and he therefore had not shown that he meets former section 321(a)(3) of the Act conditions as a child born out of wedlock whose paternity was *not* established by legitimation.

On appeal, the Applicant asserts that he meets the conditions of former section 321(a)(3) of the Act through his naturalized U.S. citizen mother because he was born out of wedlock and not legitimated by his father.[4] However, as will be discussed, the Applicant has not overcome the Director's determination that the Applicant was legitimated by his father under the laws of Jalisco, Mexico, where he and his father resided. On this basis alone, the Applicant cannot show that he satisfies the out of wedlock *without legitimation* conditions at former section 321(a)(3) of the Act. As a consequence, we need not reach the issue of whether or not he separately demonstrated that he was not legitimated

[4] On appeal, the Applicant also contends that he was not legitimated through the marriage of his parents in accordance with the laws of Jalisco that were in effect prior to February 1995. As the record shows that the Applicant's parents were never married to each other, it supports his claim that he could not have been legitimated through parental marriage. Nevertheless, as discussed, the Applicant has not overcome evidence indicating that he was otherwise legitimated by his father under the laws of Jalisco.

in California, and we reserve it. Our reservation of this issue is not a stipulation that the Applicant overcame this issue and should not be construed as such.

A. Legitimation by the Applicant's Father in Jalisco, Mexico

The Board of Immigration Appeals (the Board) has interpreted the concept of legitimation as the act of placing a child born out of wedlock in the same legal position as a child born in wedlock, and has held that "where a jurisdiction requires an affirmative act to legitimate an out-of-wedlock child, paternity is not established without the requisite act even if the jurisdiction has enacted a law to place children on equal footing without regard to the circumstances of their birth." *Matter of Cross*, 26 I&N Dec. 485, 490 (BIA 2015). In *Cross*, the Board affirmed, in part, its prior holdings in *Matter of Hines*, 24 I&N Dec. 544 (BIA 2008) and *Matter of Rowe*, 23 I&N Dec. 962 (BIA 2006), with regard to legitimation in Guyana and Jamaica in the context of derivative citizenship proceedings under former section 321(a)(3) of the Act. In those cases, the Board found that although both countries had enacted laws that effectively eliminated legal distinctions between children born in wedlock and those born out of wedlock, they retained a formal means of legitimating through the marriage of the biological parents. Because the parents in *Hines* and *Rowe* did not marry, the Board found that the paternity of the respondents had not been established by legitimation and they could therefore derive citizenship from the naturalization of their mothers under former section 321(a)(3) of the Act. *Cross*, 26 I&N Dec. at 490. Thus, in this case, whether the Applicant was "legitimated" by his father under the laws of Mexico for purposes of former section 321(a)(3) of the Act prior to reaching the age of 18 years depends on whether during that period he was afforded the same rights with regard to his father as children who were born in wedlock, and whether his father took any affirmative action required for legitimation in Mexico.

In the most recent decision, the Director discussed information that is contained in a report from the Law Library of Congress[5] indicating that under the provisions of the Civil Code of Jalisco, Mexico,[6] as amended on February 25, 1995, the rights of a child born outside of a marital union are implemented (and the child is thus legitimated) when parentage is established by the parent's voluntary acknowledgment of the child or by a final judgment declaring the paternity of the child. Acknowledgment may be achieved by any of the following ways: 1) on the birth record, before the Civil Registry Officer; 2) by a special acknowledgment proceeding before the Civil Registry Officer; 3) by a public notarial instrument; 4) under a will; or 5) by direct and open admission in court.

In this case, the Applicant's 2011 birth registration record, submitted with this Form N-600 in 2012, appears to show that in [redacted] 1981, his father appeared before a Civil Registry Officer in Jalisco, Mexico, declared that the Applicant was his son, and registered the Applicant's [redacted] 1981 birth. Moreover, the record contains a November 2011 statement from the Applicant's father, in which the father stated, in pertinent part, that he and the Applicant's mother never married each other but "we register[ed] [the Applicant's] birth and our names appear in his birth certificate." The Director denied the Form N-600, concluding that a voluntary acknowledgement of paternity by the father before a Civil Registry Officer in [redacted] 1981 demonstrated that the Applicant was legitimated by his father

[5] *Jalisco, Mexico: State Law on Legitimation and Distinctions Between Children Born In and Out of Wedlock*, LL File No. 2021-019989, Prepared in August 2017.

[6] *See generally Código Civil del Estado de Jalisco*, Feb. 25, 1995, available at https://congresoweb.congresojal.gob.mx/BibliotecaVirtual/busquedasleyes/Listado.cfm#Leyes.

under the laws of Jalisco, Mexico, as amended in February 1995, and thus precluded approval of the Form N-600 under former section 321(a)(3) of the Act, which, as stated, allows a child born out of wedlock to derive U.S. citizenship through the mother only if the paternity of the child was *not* established through legitimation.

On appeal, the Applicant claims that he was not legitimated by his father under the 1995 amendments to the Civil Code of Jalisco because the amendments are not retroactive in effect. However, the Applicant was born in 1981 and was only 14 years of age when the amendments went into effect in February 1995. Despite his claim that the legitimation provisions of the 1995 Civil Code of Jalisco do not apply to his case, the Applicant has not included any supporting evidence to establish that the amendments are not retroactive in effect and therefore do not apply to individuals such as himself who were born prior to the effective date and were still a minor at the time of the amendments. It is the Applicant's burden to establish the claimed citizenship by a preponderance of the evidence. Section 341(a) of the Act, 8 U.S.C. § 1452(a); 8 C.F.R. § 341.2(c). More specifically, the Applicant bears the burden on any question of foreign law. Unlike general immigration law and regulations, immigration officers are not expected to have knowledge of foreign law. *Matter of S-K-*, 23 I&N Dec. 936, 939 (BIA 2006) (providing that to the extent any claim turns on questions of foreign law, the applicant bears the burden of proving that question). Consequently, the Applicant has not met his burden of proof to establish that the 1995 amendments to the Civil Code of Jalisco are inapplicable to his case, as he claims.

In the alternate, the Applicant contends on appeal that even if the 1995 amendments to the Civil Code of Jalisco are retroactive in effect, his birth certificate only lists the name of his father and does not show that his father was physically present at the Applicant's birth registration or that his father otherwise voluntarily acknowledged the Applicant as his son. The Applicant appears to be referring to a certified copy of his birth registration issued in July 2020 that is part of the Applicant's administrative record. However, the record also contains the previously referenced 2011 copy of his original birth registration that the Applicant had included with his 2012 Form N-600 filing. As explained, the 2011 copy of the Applicant's 1981 birth registration not only names the Applicant's father, but also appears to specify that the father appeared before the Officer of the Civil Registry in Jalisco, Mexico in [redacted] 1981, stated that the Applicant was his son, and registered the Applicant's [redacted] 1981 birth. These actions would satisfy the voluntary acknowledgement conditions for legitimation under the Civil Code of Jalisco, Mexico, as amended in 1995. Consequently, the Applicant has not shown that he satisfies the out of wedlock *without legitimation* conditions for derivative citizenship at former section 321(a)(3) of the Act.

B. Constitutionality, Administrative Procedure Act, and Estoppel Claims

On appeal, the Applicant appears to make constitutionality claims regarding the application of former section 321(a)(3) of the Act on unwed mothers within the context of the Director's finding that he was not eligible for a Certificate of Citizenship through his mother given the facts of his case. However, like the Board, we cannot rule on the constitutionality of laws enacted by Congress and the regulations we administer. *See, e.g., Matter of Fuentes-Campos*, 21 I&N Dec. 905, 912 (BIA 1997); *Matter of C-*, 20 I&N Dec. 529 (BIA 1992). It is well established that the requirements for U.S. citizenship, as set forth in the Act, are statutorily mandated by Congress, and U.S. Citizenship and Immigration Services (USCIS) lacks statutory authority to issue a Certificate of Citizenship when an applicant fails to meet

the relevant statutory provisions set forth in the Act. A person may only obtain citizenship in strict compliance with the statutory requirements imposed by Congress. *INS v. Pangilinan*, 486 U.S. 875, 885 (1988). Even courts may not use their equitable powers to grant citizenship, and any doubts concerning citizenship are to be resolved in favor of the United States. *Id.* at 883-84; *see also United States v. Manzi*, 276 U.S. 463, 467 (1928) (stating that "citizenship is a high privilege, and when doubts exist concerning a grant of it . . . they should be resolved in favor of the United States and against the claimant"). Moreover, "it has been universally accepted that the burden is on the . . . applicant to show his eligibility for citizenship in every respect." *Berenyi v. District Director, INS*, 385 U.S. 630, 637 (1967). Consequently, we may not disregard the statutory conditions at former section 321 of the Act.

The Applicant also claims that the Director's conclusion that the Applicant was legitimated in California and Mexico goes against prior agency determinations in other similar decisions from our office and is therefore arbitrary and capricious in violation of the Administrative Procedure Act, and maintains that the agency is estopped from determining that the Applicant was legitimated in California and Mexico. First, we note that we have reserved the issue as to whether or not the Applicant was legitimated in California. With respect to the Applicant's claim that we have previously concluded that an Applicant is not considered legitimated in a certain state of Mexico when the father was only named on the birth certificate, the facts and evidence in this case are different to those in the non-precedent decisions that the Applicant cites. Moreover, the decisions he cites were not published as precedents and therefore do not bind USCIS officers in future adjudications. *See* 8 C.F.R. § 103.3(c). As discussed, the Applicant's original birth registration not only names his father, but appears to show that his father appeared before an Officer of the Civil Registry in Jalisco, Mexico and voluntarily acknowledged the Applicant was his son when registering the birth.

Finally, we have no authority to apply the judicially devised doctrine of equitable estoppel to preclude a USCIS component from undertaking a lawful course of action that it is empowered to pursue by statute and regulation. *See Matter of Hernandez-Puente*, 20 I&N Dec. 335, 338-39 (BIA 1991). Estoppel is an equitable form of relief that is available only through the courts. There is no delegation of authority, statute, regulation, or other law that permits us to apply this doctrine to the cases before us. *Id.* It remains that the Applicant has not shown that he is otherwise eligible for a Certificate of Citizenship under the out of wedlock without legitimation conditions at former section 321(a)(3) of the Act through his mother.

III. CONCLUSION

The Applicant has not overcome the Director's determination that the Applicant appears to have been legitimated by his father. As a consequence, the Applicant has not met his burden of proof to establish that he derived U.S. citizenship from his mother as a child born out of wedlock *without legitimation* under former section 321 of the Act, and his Form N-600 may not be approved.

ORDER: The appeal is dismissed.