U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29666302

Date: DEC. 19, 2023

Appeal of Kansas City, Missouri Field Office Decision

Form N-600, Application for Certificate of Citizenship

The Applicant, who was born abroad in 1981, seeks a Certificate of Citizenship to reflect that he derived citizenship from his adoptive U.S. citizen parents. To derive U.S. citizenship after birth a person who was born abroad to noncitizen parents must satisfy certain statutory requirements before turning 18 years of age.

The Director of the Kansas City, Missouri Field Office considered the Applicant's citizenship claim under current section 320 of the Act, 8 U.S.C. § 1431,[1] and denied the Form N-600 concluding that the Applicant did not establish he was lawfully admitted to the United States for permanent residence, as required to derive citizenship under that section of the Act.

On appeal, the Applicant asserts that he has satisfied most of the conditions in section 320 of the Act, because he was initially paroled into the United States in 1994 and thereafter resided in the legal and physical custody of his adoptive parents until he turned 18 years old in 1999.

The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). 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.

Although, as explained below, the Director applied incorrect law in evaluating the Applicant's citizenship claim, lawful admission to the United States for permanent residence was also a requirement under the law in effect during the relevant period before the Applicant's 18th birthday. Because the Applicant has not shown that he met this requirement before turning 18 years of age, he is not eligible for a Certificate of Citizenship.

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." *Minasyan v. Gonzales*, 401 F.3d 1069, 1075 (9th Cir. 2005).

[1] As amended by the Child Citizenship Act of 2000 (CCA) (Oct. 30, 2000) Pub. L. No. 106-395, 114 Stat. 1631 (effective February 27, 2000).

The record reflects that the Applicant was born in South Korea in [redacted] 1981 to noncitizen parents. In [redacted] 1994, U.S. Border Patrol agents apprehended the Applicant in [redacted], New York area after he had been smuggled into the United States with his biological father and other migrants from Canada. The Applicant was determined to be inadmissible to the United States as an immigrant without proper documents and detained at the border, but later released on bond and paroled into the country. In [redacted] 1994, the Applicant's U.S. citizen aunt and her spouse adopted the Applicant. The Applicant indicates on appeal that he resided in the United States with his adoptive parents until December 1999, when he returned to South Korea to live there with his biological father.

As a preliminary matter, the Director incorrectly applied current section 320 of the Act to the Applicant's derivative citizenship claim, because that section was not in effect until February 27, 2001.[2] Under current section 320 of the Act, as amended by the CCA, a foreign-born child under 18 years of age, who has at least one U.S. citizen parent and is residing in that parent's legal and physical custody in the United States as a lawful permanent resident, will automatically derive U.S. citizenship from that parent. However, the provisions of the CCA are not retroactive and apply only to individuals who were not yet 18 years old as of February 27, 2001. Because the Applicant turned 18 years of age in 1999, he is not eligible for the benefits of the amended section 320 of the Act. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). Rather, as the last critical event that took place before the Applicant's 18th birthday was his 1994 adoption, we must consider the Applicant's derivative U.S. citizenship claim under the provisions of former section 321 of the Act, which was in effect at the time and provided, in pertinent part, that:

> (a) A child born outside of the United States of [noncitizen] parents . . . becomes a citizen of the United States upon fulfillment of the following conditions:
>
> (1) The naturalization of both parents; [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.
>
> (b) Subsection (a) of this section shall apply to an adopted child only *if the child is residing in the United States at the time of naturalization of such adoptive parent or parents*, in the custody of his adoptive parent or parents, pursuant to a lawful admission for permanent residence (emphasis added).

[2] *See* Section 104 of the CCA.

II. ANALYSIS

Because the Applicant is claiming derivative citizenship through his adoptive parents, he must show not only that he meets the relevant conditions in former section 321 of the Act concerning age and the parents' naturalization, but he must also satisfy the additional requirements in former section 321(b) of the Act applicable to adopted children. Thus, to prevail on his citizenship claim the Applicant must show that (1) his adoptive parents naturalized as U.S. citizens, and (2) he was residing in the United States pursuant to a lawful admission for permanent residence at the time of their naturalization.

The Applicant has not shown that he meets these requirements. The evidence he previously submitted shows that his adoptive mother naturalized as a U.S. citizen in 1989, before he came to the United States, and his adoptive father was born in the United States. The Applicant therefore cannot satisfy the condition of "residing in the United States at the time of naturalization of [his] adoptive parent or parents" in former section 321(b) of the Act. Furthermore, the term "lawfully admitted for permanent residence" in that section of the Act means "the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed." Section 101(a)(20) of the Act, 8 U.S.C. §1101(a)(20). Here, the record reflects, and the Applicant confirms, that he was paroled into the United States in 1994 and thereafter resided in the country as a parolee until his 18th birthday in 1999.

As the Applicant does not claim, and the record does not show that he was lawfully admitted to the United States as a lawful permanent resident at any time before he turned 18 years old, he does not meet this mandatory requirement for derivative citizenship under former section 321 of the Act.

We acknowledge the Applicant's explanation that his biological father brought him to the United States because he was not able to care for him on his own after the parents divorced, that his aunt and her spouse also adopted his sister, and that he resided with them in the United States after he was paroled into the country. While those are sympathetic circumstances, a person may only obtain citizenship in strict compliance with the statutory requirements imposed by Congress. *INS v. Pangilinan*, 486 U.S. 875, 884 (1988). We have no authority to issue a Certificate of Citizenship to an applicant who does not meet such statutory requirements. Section 341(a) of the Act, 8 U.S.C. § 1452(a).

The Applicant has not demonstrated that he meets the relevant conditions in former section 321 of the Act to derive U.S. citizenship from his adoptive parents. As such, he is ineligible for a Certificate of Citizenship and his Form N-600 remains denied.

ORDER: The appeal is dismissed.