U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24971303

Date: JUL. 10, 2023

Motion on Administrative Appeals Office Decision

Form N-600, Application for Certificate of Citizenship

The Applicant, a native and citizen of Mexico, 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from his mother under former section 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432, *repealed by* Sec. 103(a), title I, Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631 (2000).

The Director of the New Orleans, Louisiana Field Office denied the Form N-600, Application for Certificate of Citizenship (Form N-600), concluding that the record did not establish eligibility for derivative citizenship because the Applicant could not establish that his parents were "legally separated" as required by former section 321(a)(3) of the Act. We dismissed a subsequent appeal on the same basis. The matter is now before us on motion to reopen. 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). Upon review, we will dismiss the motion.

I. LAW

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). We may grant a motion that meets these requirements and establishes eligibility for the benefit sought.

The record reflects that the Applicant was born in Mexico in [redacted] 1981 to noncitizen parents. The Applicant adjusted his status to that of a lawful permanent resident within the United States in September 1998, at the age of 17 years. His mother became a U.S. citizen through naturalization in February 1997. The Applicant did not claim or provide evidence that his father is a U.S. citizen, instead claiming derivative citizenship solely 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). Based on the Applicant's year of birth in 1981 and the year when he turned 18 (1999), his derivative citizenship claim falls under the provisions of former section 321 of the Act.[1]

[1] The Child Citizenship Act of 2000 (the CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), which took effect on

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:
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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.

In this case, the Applicant claims to have established eligibility to derive citizenship solely through his mother pursuant to the first clause of former section 321(a)(3) of the Act, which provides that a child may derive citizenship through the naturalization of the parent having legal custody of the child when there has been a legal separation of the parents.

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. at 376.

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).

II. ANALYSIS

In our prior decision dismissing the Applicant's appeal, incorporated here by reference, we determined that, though he did meet some of the requirements under former section 321(a) of the Act, the Applicant did not submit evidence to demonstrate that his parents were formally or officially separated in 1981 or at any time prior to the Applicant's 18th birthday. As such, though the Applicant's parents may have been estranged and the Applicant has not seen his father since 1981, they remained married, and not "legally separated," for purposes of derivative citizenship under former section 321 of the Act and the Applicant' did not derive U.S. citizenship upon his mother's naturalization under former section 321(a)(3) of the Act.

On motion to reopen, the Applicant now claims that his parents were never "civilly married." The Applicant asserts that his parents had only been married in a "religious church ceremony," and despite not being "legally married," his mother has referred to herself as married ever since. The Applicant indicates that his father abandoned the family when he was about eight months old and neither he nor his mother ever spoke to him again. He submits a personal statement, a statement from his mother, and a certificate indicating the Non-Existence of Marriage between his mother and C.A-J-S-.[2] In addition, the Applicant further asserts that, regardless of his parents' marital status, he recently learned that his father died in Mexico in November 1989, prior to his mother's naturalization, his adjustment of status in the United States, and his 18th birthday. As such, he claims that, even if his parents were married, his father's death in 1989, provided for the Applicant's eligibility to derive citizenship solely through his mother pursuant to former section 321(a)(2) of the Act, which provides that a child may derive citizenship through the naturalization of the surviving parent if one of the parents is deceased. He submits a Death Certificate for A-J-S-.[3]

A. Parents' Marital Status

On the Form N-600, the Applicant indicated that his mother, the parent from whom he claimed to derive U.S. citizenship, was currently married to his father, A-J-, but they had been separated since the Applicant was eight months old and he never saw A-J- again. The Applicant submitted a copy of his mother's Certificate of Naturalization indicating she was married at the time of her naturalization in February 1997.[4]

The Applicant submitted a typewritten copy of his Mexican birth certificate, which was issued in October 1986. The information on the 1986 birth certificate is an abstract of his original birth certificate, registered in May 1981 by his mother. It shows that the Applicant was born in [redacted] 1981, in [redacted] Mich., and lists the identities of his parents, but it does not specify their marital status.[5] Consequently, the 1986 birth certificate that the Applicant submitted with

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[2] We use initials to protect the privacy of individuals.

[3] We use the initials A-J- and A-J-S- for the Applicant's father throughout this decision, depending on the document referenced. As explained in detail below, only the Non-Existence of Marriage Certificate uses the name C.A-J-S-.

[4] We further note that on the Form I-130, Petition for Alien Relative, filed in behalf of the Applicant in March 1993, his mother indicated that she was "single," listing A-J- as her former spouse and specifying that the marriage ended in 1981.

[5] Although an original, complete birth certificate would indicate the status of married parents, we acknowledge that not all Mexican birth certificates show the status of unmarried parents. *See* The Law Library of Congress, Global Legal Research

his Form N-600 does not contain sufficient information to show whether or not he was born in or out of wedlock.

On motion, the Applicant submits a statement from his mother dated September 2022, in which she recalls that she met the A-J- when she was 14 years old and went to live with him and his family. She states that she remembers wearing a dress and going to a church where the priest gave them a blessing, but she does not recall ever getting married in front of a judge or signing anything stating they were legally married. She does not provide specific information regarding where she lived with A-J- or the specific location of where the ceremony occurred. She indicated that she "felt" that they were married and has been calling herself married ever since. She further recalls that when the Applicant was about six or seven months old, A-J- left them for the last time and she recently found out that he died many years ago.

The Applicant also submits a Certificate of Non-Existence of Marriage indicating that a "thorough search in the marriage registry books of this official, corresponding to the Town of [redacted] Michocan, during the years 1973 to 2021" revealed no record of marriage was located for the Applicant's mother and C.A-J-S-. However, throughout the record, the Applicant and his mother refer to the Applicant's father as A-J- and the Applicant's birth certificate includes his second last name, A-J-S-, but the certification lists his father's name as C.A-J-S-, without any explanation. Moreover, the certification includes an official disclaimer that "it is worth mentioning that said marriage could have been registered in another year, another municipality of the state or in another federal entity." Consequently, given the name provided on the certification for the Applicant's father and the disclaimer from the clerkship of [redacted] Michocan as to whether there may be marriage registry information in other locations and other times, this certification provided on motion is not sufficient to show that the Applicant's parents never married and that the Applicant was born out of wedlock.

B. Deriving U.S. Citizenship through Surviving Parent

In the alternative, the Applicant claims that even if his parents were married and not legally separated, his father's death in 1989 provided for the Applicant's eligibility to derive citizenship solely through his mother pursuant to former section 321(a)(2) of the Act. On motion, the Applicant submits a Death Certificate indicating that a male named A-J-S- died of a heart attack in November 1989 in Mexico. The Death Certificate indicates that A-J-S-'s marital status is "unknown" and lists a date of birth for A-J-S- as [redacted], 1955. However, this date of birth is inconsistent with the record. On the Form N-600, the Applicant listed A-J-'s date of birth as [redacted] 1956. On the copy of the Applicant's Mexican birth certificate, the Applicant's father's age is listed as 23, which does not coincide with either of the dates of birth indicated. Consequently, given the discrepancies in the record regarding the Applicant's father's date of birth and the "unknown" marital status at the time of death, the death certificate provided on motion is not sufficient to show that it belongs to the Applicant's actual father, or that the Applicant's father was deceased in November 1989, prior to his mother's naturalization, his adjustment of status in the United States, and his 18th birthday.

Center, LL File Nos. 2010-004743 through 2010-004774 (citing to Ley del Registro Civil del Estado de Jalisco, art. 44, Periódico Oficial del Estado de Jalisco, Feb. 25, 1995, which prohibits, among other things, references to the out-of-wedlock nature of a birth on the birth certificate). Nevertheless, the burden of proof remains on the Applicant to show that his parents were not married since that is the basis for his claim in this matter.

III. CONCLUSION

We previously concluded that the Applicant did not establish derivative citizenship through his naturalized U.S. citizen mother under former section 321(a)(3) of the Act, because he did not show that his parents were formally or officially separated in 1981 or at any time prior to his 18th birthday. The new evidence provided by the Applicant on motion does not overcome the evidence in the record indicating that his parents were married at the time of his birth. In the alternative, even if the evidence shows that his parents were married, he still does not satisfy the requirements for derivative citizenship under former section 321(a)(2) of the Act as he has not shown that his father was deceased prior to his 18th birthday. Consequently, reopening of these proceedings is not warranted and his application for a Certificate of Citizenship remains denied.

ORDER: The motion to reopen is dismissed.