U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26925838

Date: JUNE 15, 2023

Appeal of Jacksonville, Florida Field Office Decision

Form N-600, Application for Certificate of Citizenship

The Applicant seeks a Certificate of Citizenship to reflect that he acquired U.S. citizenship from a U.S. citizen parent under former section 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432.

The Director of the Jacksonville, Florida Field Office initially denied the application, concluding that the record did not establish that the Applicant was eligible for a Certificate of Citizenship under former section 321(a)(1) of the Act because only one of his parents naturalized prior to the Applicant's 18th birthday.[1] The Applicant filed a motion to reopen and reconsider the matter but did not include a statement or attach additional evidence. As a consequence, the Director dismissed the filing because it did not meet the requirements for a motion to reopen or reconsider. The matter is now before us on appeal. 8 C.F.R. § 103.3.

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.

I. LAW

The Applicant's birth certificate reflects that he was born in Jamaica in [redacted] 1967 to a noncitizen mother and an unnamed father. The Applicant's mother married K-S-B, the Applicant's claimed father, in 1972, and the Applicant entered the United States as a lawful permanent resident in November 1975. A Certificate of Naturalization shows that K-S-B- naturalized in March 1982, when the Applicant was 14 years old, and USCIS records show that his mother naturalized in June 1986, when the Applicant was over 18 years of age. The Applicant seeks a Certificate of Citizenship solely through his claimed U.S. citizen father, K-S-B-.

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.

[1] The Director also concluded that the Applicant was not eligible under current section 320 of the Act, 8 U.S.C. §1341, because he was not under the age of 18 years on the effective date of that provision. The Applicant does not dispute this conclusion on appeal.

2005). Based on the Applicant's year of birth in 1967 and the year when he turned 18 (1985), his derivative citizenship claim falls under the provisions of former section 321 of the Act.

Former section 321 of the Act provides, 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.

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.

II. ANALYSIS

The Director denied the application because the Applicant's mother naturalized after the Applicant turned 18 years of age, and he therefore could not satisfy the conditions at former section 321(a)(1) of the Act that require both parents to have naturalized prior to the Applicant's 18th birthday. The Applicant filed a motion to reopen and reconsider but did not make a statement or submit additional evidence. As a consequence, the Director dismissed the combined motion because it did not show that the Director's denial was erroneous based on evidence of new facts or an incorrect application of law or policy. 8 C.F.R. § 103.5(a)(2), (3).

On appeal, the Applicant claims that the Director erroneously dismissed the combined motion because, he asserts, he had included evidence that his parents divorced in 1977, and therefore he was residing in the legal custody of his father after a legal separation when K-S-B- naturalized in 1982. Thus, the Applicant claims he is eligible for a Certificate of Citizenship under former section 321(a)(3) of the Act.

On appeal, the Applicant does not provide a copy of the 1977 divorce documents that he references and a review of the record before the Director does not show that the Applicant submitted the divorce records on motion, as he claims. Finally, other evidence in the record is inconsistent with the Applicant's claim that his mother and K-S-B- divorced in 1977. Specifically, K-S-B-'s Certificate of Naturalization reflects that K-S-B- claimed to be married when he naturalized in 1982, and the Applicant stated on his 2018 Form N-600 that K-S-B-, although divorced, had been married only once: to the Applicant's mother. Consequently, the record as presently constituted indicates that the Applicant's mother and K-S-B- were still married to each other when K-S-B- naturalized in 1982. The Applicant has not shown that his mother and K-S-B- had divorced in 1977 such that he was residing in the legal custody of K-S-B- after a legal separation of his parents when K-S-B- naturalized in 1982 for purposes of satisfying former section 321(a)(3) of the Act conditions. As such, the Applicant is ineligible for a Certificate of Citizenship under former section 321 of the Act and his Form N-600 remains denied.

ORDER: The appeal is dismissed.