U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26505683

Date: JUNE 15, 2023

Appeal of Hialeah, Florida 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.

The Director of the Hialeah, Florida Field Office denied the application, concluding that the record did not establish that that the Applicant was eligible for a Certificate of Citizenship under former section 321 of the Act because he had not shown that both parents were naturalized U.S. citizens. The Director also correctly concluded, and the Applicant does not dispute, 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.[1] The matter is now before us on appeal. 8 C.F.R. § 103.3.

On appeal, the Applicant submits additional evidence.

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 record reflects that the Applicant was born out of wedlock in the Dominican Republic in [redacted] 1982, to noncitizen parents who never married each other. He was subsequently admitted to the United States as a lawful permanent resident in September 1989 to join his mother. The Applicant's mother became a U.S. citizen through naturalization in June 1996. 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.

[1] 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Stat. 1631 (Oct. 30, 2000), which took effect on February 27, 2001, amended former sections 320 and 322 of the Act, and repealed former section 321 of the Act.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).

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 1982 and the year that he turned 18 (2000), his derivative citizenship claim falls 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 [noncitizen] parents, or . . . [a noncitizen] 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
>
> . . .
>
> (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 101(c)(1) of the Act, 8 U.S.C. § 1101(c)(1), defines the term "child" in the context of derivative citizenship as:

> an unmarried person under twenty-one years of age and includes a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in the United States or elsewhere . . . , if such legitimation . . . takes place before the child reaches the age of 16 years . . . , and the child is in the legal custody of the legitimating . . . parent or parents at the time of such legitimation.

Because the Applicant was born abroad, he is presumed to be a noncitizen 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, his Form I-551 (permanent resident card), and his mother's Certificate of Naturalization show that his mother became a naturalized U.S. citizen in 1996 after the Applicant had been admitted to the United States as a lawful permanent resident and was still under the age of 18, as required to meet former section 321(a)(4) of the Act and one element at former section 321(a)(5) of the Act.[2] Lastly, although the Director found that the Applicant had not shown that both parents were naturalized U.S. citizens, as required to satisfy former section 321(a)(1) of the Act conditions, 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.

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 this case, we will first consider whether the Applicant was "legitimated" by his father under the laws of the Dominican Republic for purposes of former section 321(a)(3) of the Act.

In *Matter of Cabrera*, 21 I&N Dec. 589, 592 (BIA 1996), the Board found that under the Dominican Code for Protection of Children (DCPC),[3] which took effect on January 1, 1995, a child born out of wedlock in the Dominican Republic may be a legitimated child as long as parentage of the child is established according to the legal procedures of the Dominican Republic, and while the child was under the age of 18. The Board, citing a Library of Congress legal opinion, noted that "the law took effect on January 1, 1995, and applies to all 'present and future legal situations' and to 'legal situations that were established and created before the promulgation of the . . . law and continue in existence after such promulgation.'" *Cabrera*, 21 I&N Dec. at 590. In the present matter, the record demonstrates that the Applicant's father registered the Applicant's birth in person in 1984 and included his name as the father, thus acknowledging the Applicant as his child while the Applicant was still in the Dominican Republic. Consequently, pursuant to the Board's holding in *Matter of Cabrera*, the Applicant's legitimation was effective on January 1, 1995, the date the DCPC took effect, based on the father's prior affirmative act of acknowledging paternity in 1984 and prior to his mother's 1996 date of naturalization.

---

[2] The record does not contain sufficient evidence to show that the Applicant was residing in the United States at some point on or after the date of his mother's 1996 naturalization for purposes of the satisfying the remaining element at former section 321(a)(5) of the Act. However, as will be discussed, the application is not approvable for other reasons. Accordingly, we reserve the issue as to whether the Applicant has satisfied the second element relating to *residing in the United States* pursuant to admission as a lawful permanent resident.

[3] Ley No. 14-94, que crea el Código para la Protección de Niños, Niñas y Adolescentes [Law No. 14/94, Creating the Code for the Protection of Children and Adolescents] arts. 14, 363, https://docs.republica-dominicana.justia.com/nacionales/leyes/ley-14-94.pdf.

Because the record shows that the Applicant was legitimated by his father, he cannot show that he met the out of wedlock *without legitimation* conditions at former section 321(a)(3) of the Act. Consequently, the Applicant has not met his burden of proof to establish that he derived U.S. citizenship from his mother under former section 321 of the Act, and his application for a Certificate of Citizenship remains denied.

ORDER: The appeal is dismissed.