U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25573140

Date: JUNE 22, 2023

Appeal of Mount Laurel, New Jersey Field Office Decision

Form N-600, Application for a Certificate of Citizenship

The Applicant seeks a Certificate of Citizenship to reflect that he derived U.S. citizenship from his U.S. citizen mother under former section 321 of the Act, 8 U.S.C. § 1342.

The Director of the Mount Laurel, New Jersey Field Office denied the application, concluding that the Applicant did not establish that he was eligible for a Certificate of Citizenship under former section 321(a)(3) of the Act because he did not show that he was residing in the legal custody of his U.S. citizen mother after a legal separation of his parents on or after the date the mother naturalized and while the Applicant was under the age of 18 years. The Director also concluded that the Applicant was not eligible under section 320 of the Act because he was not under the age of 18 years on the effective date of that provision, and the Applicant does not contest this conclusion.[1] The matter is now before us on appeal. 8 C.F.R. § 103.3.

On appeal, the Applicant asserts that he meets former section 321(a)(3) of the Act conditions and submits a brief. 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 in Jamaica in [redacted] 1970 to noncitizen parents who were not married when he was born but subsequently married in 1972. The Applicant later entered the United States as a lawful permanent resident in July 1976, at the age of five years, and his mother became a U.S. citizen through naturalization in 1980 when the Applicant was 10 years of age. There is no evidence that the Applicant's father became 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Stat. 1631 (Oct. 30, 2000), which took effect on February 27, 2001, amended former sections 320 and 322 of the Act, and repealed former section 321 of the Act.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. *See Matter of Rodriguez-Tejedor,* 23 I&N Dec. 153 (BIA 2001).

A. Derivative Citizenship Claim

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 1970 and the year when he turned 18 (1988), 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 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:
>
> . . .
>
> (3) The naturalization of the parent having legal custody of the child when there has been a legal separation of the parents . . . ; 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 naturalized under clause . . . (3) of this subsection, or thereafter begins to reside permanently in the United States while under the age of 18 years.

Moreover, the Applicant must meet the definition of a "child" in section 101(c)(1) of the Act, 8 U.S.C. § 1101(c)(1), which requires, in pertinent part, that during the relevant timeframe he must be an unmarried person under twenty-one years of age.

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. at 376. In this case, the Applicant claims to satisfy the former section 321(a)(3) of the Act legal custody after a legal separation conditions for derivative citizenship.

II. ANALYSIS

The record reflects that the Applicant's parents were married in Jamaica in 1972, and remained married to each other when his mother naturalized in 1980, as reflected on the mother's Certificate of Naturalization. The Applicant provides no evidence that his parents divorced at any time before his 18th birthday or that their marital relationship was otherwise terminated, dissolved, or altered through

a formal governmental action before he turned 18 years of age, and the Director did not reach the separate issue of whether or not the Applicant showed he was residing in *legal custody* of his mother as a lawful permanent resident at some point on or after her naturalization and before he turned 18 years of age for purposes of section 321(a)(3) of the Act. Instead, the issue before us is whether or not the Applicant first has shown that his parents were legally separated prior to the Applicant's 18th birthday, as he claims, in order to then satisfy the former section 321(a)(3) of the Act *legal separation* conditions for derivative citizenship.

The term "legal separation" in the context of derivative citizenship means either a limited or absolute divorce obtained through judicial proceedings. *Matter of H*, 3 I&N Dec. 742, 743 (BIA 1949). The U.S. Court of Appeals for the Third Circuit (Third Circuit), in whose jurisdiction this case arises, further held that a "legal separation" for purposes of former section 321(a) "occurs only upon a formal governmental action, such as a decree issued by a court of competent jurisdiction, that under the laws of a state or nation having jurisdiction over the marriage, alters the marital union. *See Morgan v. Attorney General*, 432 F.3d 226, 233 (3d Cir. 2005) (finding no legal separation absent a judicial decree as required by the applicable Jamaican and state laws at issue there); *Nehme v. INS*, 252 F.3d 415, 426 (5th Cir. 2001) (finding that "in the United States, the term 'legal separation' is uniformly understood to mean ***judicial*** separation") (emphasis in original).

In this case, the Applicant provided a document titled FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT OF ABSOLUTE DIVORCE (absolute divorce), issued by the Superior Court of the District of Columbia, [redacted] (Family Court) in [redacted] 1991, which granted his parents an absolute divorce in accordance with section 16-904(a)(2) of the Code of the District of Columbia (D.C. Code).

The Applicant asserts on appeal that the Family Court's [redacted] 1991 absolute divorce includes a judicial determination, retroactive in effect, that satisfies the requirement to show that his parents were "legally separated" as of March 1988 for purposes of former section 321(a)(3) of the Act because the Family Court stated in the divorce judgment that his parents had separated on that date.

As discussed, the Applicant's case falls under the jurisdiction of the Third Circuit, which in *Morgan* examined the laws for the locations that were potentially applicable to the marriage of the petitioner's parents. The Third Circuit first concluded that the petitioner's parents were not legally separated under the laws of Jamaica because there was no evidence that a Jamaican court had issued a judicial separation decree at a time when the laws recognized a right to judicial separation distinct from absolute divorce. *Morgan*, 432 F.3d at 233.[2] The Third Circuit also concluded that the laws of Pennsylvania provided for a legal separation only upon divorce secured through a judicial order and therefore the petitioner had not shown that her parents were legally separated because they were not divorced. *Id.* at 234. Here, the Family Court's 1991 divorce judgment itself meets the definition of legal separation for purposes of derivative citizenship as of 1991 date of the judgment. Moreover, although the 1991 divorce judgment includes a *factual* finding that the Applicant's parents had separated in March 1988, the judgment reflects that the court made the finding for purposes of establishing that the parents had satisfied the one-year separation threshold requirement for an absolute divorce, acknowledging that the Applicant's parents had "lived separate and apart from each other for

[2] The Applicant does not contend, and the record does not show, that his parents legally separated or divorced in Jamaica.

a period of one year immediately preceding the filing" of the divorce complaint as required to obtain a divorce pursuant to section 16-904(a)(2) of the D.C. Code.

The Applicant contends that a couple such as his parents may be legally separated without having to obtain a divorce decree, citing to *Espichan v. Attorney General*, 945 F.3d 794 (3d Cir. 2019). In that case, the court found that the foreign national's parents had legally separated without a formal judicial decree because no court order was required to establish a legal separation under Peruvian law and the parents had otherwise taken steps required to legally dissolve their de facto union under Peruvian law. Here, the District of Columbia has separate provisions for divorce and legal separation at section 16-904 of the D.C. Code. The Applicant's parents were granted a divorce pursuant to section 16-904(a)(2) of the D.C. Code after showing that they had lived separate and apart for the minimum required period. However, the Applicant's documents do not reflect that his parents sought or were granted a legal separation under the applicable statutory provisions at section 16-904(b) of the D.C. Code. The Applicant's evidence also does not contain information to show that the parents' divorce judgment was intended to be retroactive in effect, as he claims.

The Applicant also claims, citing *Minasyan*, *supra*, that his parents must be deemed to have been legally separated in 1988 under District of Columbia law because the cases are analogous. Unlike the divorce at issue in the *Minasyan* case, however, the Applicant's parents' divorce decree does not list a legal date of separation in March 1988. Rather, the parents' divorce decree only indicates that a cause of action for divorce was established based on a minimum separation period. There is no indication in the Applicant's parents' divorce decree or elsewhere that they were legally separated prior to their divorce or that the claimed 1988 date was officially recognized or judicially approved outside of the divorce decree. Contrary to the Applicant's claim, his parents remained married and not "legally separated" for purposes of derivative citizenship under former section 321 of the Act until their divorce in 1991. Consequently, the Applicant has not shown that his parents were *legally* separated for purposes of this derivative citizenship application prior to issuance of the [redacted] 1991 divorce absolute, and before his 18th birthday, as required to to satisfy conditions at former section 321(a)(3) of the Act.

III. CONCLUSION

As the Applicant has not shown that his parents legally separated at some point on or after the date his mother naturalized in 1980 and before the Applicant turned 18 years of age in [redacted] 1988, he cannot show that he met the residing in the legal custody of the U.S. citizen parent after a *legal separation* 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.