U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24626069

Date: MARCH 2, 2023

Appeal of Los Angeles County, California Field Office Decision

Form N-600, Application for a Certificate of Citizenship

The Applicant seeks a Certificate of Citizenship to reflect that she derived citizenship from her naturalized U.S. citizen father under former section 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432.[1] To derive U.S. citizenship under that section of the Act, a child born abroad to noncitizen parents must satisfy certain statutory conditions before turning 18 years of age.

The Director of the Los Angeles County, California Field Office denied the Form N-600, concluding that the Applicant did not derive citizenship because she was over the age of 18 years when she was admitted to the United States as a lawful permanent resident.[2] The matter is now before us on appeal.

The Applicant asserts that the Director's determination was incorrect because her U.S. citizenship claim falls within the jurisdiction of the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit), which held in *Cheneau v. Garland*, 997 F.3.d 916 (9th Cir. 2021) (en banc) that a foreign-born child may derive citizenship under former section 321 of the Act irrespective of whether they had been lawfully admitted to the United States for permanent residence. She reiterates that she meets all of the requirements for derivative citizenship and renews her request for a Certificate of Citizenship.

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 abroad in [redacted] 1977 to married parents. According to the Applicant, she was admitted to the United States in 1979 as a nonimmigrant visitor for pleasure (B2).[3] Her parents divorced in California in 1982, and the family court awarded custody

[1] Repealed by Sec. 103(a), title I, Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631 (2000).

[2] The Director also found that the Applicant was ineligible to derive citizenship under current section 320 of the Act, 8 U.S.C. § 1431, because she turned 18 years of age before that section went into effect on February 27, 2001. The Applicant does not contest this determination on appeal, and we will not address it further.

[3] The record does not contain evidence of that entry.

of the Applicant and her sibling to their father. The father naturalized as a U.S. citizen in March 1992, when the Applicant was 15 years old.[4] A year later the father filed a Form I-130, Petition for Alien Relative (visa petition) on the Applicant's behalf to classify her as his child for immigration purposes. In [redacted] 1996, three months after her 18th birthday, the Applicant filed an application to adjust her status to that of a lawful permanent resident, which was granted in March 1997 when she was 19 years of age.

To determine whether the Applicant derived U.S. citizenship from her father based on these facts, we apply "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).

The last critical event in this case is the Applicant's 18th birthday in [redacted] 1995, when former section 321 was in effect. Former section 321 provided in relevant 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 . . . 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, she is presumed to be a noncitizen and bears the burden of establishing her claim to U.S. citizenship by a preponderance of credible evidence. *See Matter of Baires-Larios,* 24 I&N Dec. 467, 468 (BIA 2008).

II. ANALYSIS

There is no dispute that the Applicant fulfilled some of the conditions for derivative citizenship under former section 321(a)(3) of the Act; specifically, the record reflects that the Applicant was under the

[4] Her mother did not naturalize until 2007, when the Applicant was 29 years of age. The Applicant does not claim eligibility to derive citizenship through her mother.

age of 18 years when her parents divorced and the court granted legal custody to her father,[5] and when her father naturalized as a U.S. citizen. The remaining issue is whether the Applicant has established she was residing in the United States pursuant to a lawful admission for permanent residence at the time her father naturalized in 1992 or began to permanently reside in the United States thereafter, but before she turned 18 years old in [redacted] 1995, as required under former section 321(a)(5) of the Act to derive citizenship.

As stated, the Director determined that the Applicant did not meet this requirement because she did not obtain lawful permanent resident status until March 1997, over a year after her 18th birthday. The Applicant does not contest that she was not a lawful permanent resident before turning 18 years of age. Nevertheless, she asserts that the Director's determination was in error, because following the Second Circuit's decision in *Nwozuzu v. Holder*, 726 F.3d 323 (2d Cir. 2003)[6] the Ninth Circuit affirmed in *Cheneau v. Garland* that the Congress' intent in enacting former section 321(a)(5) of the Act was to establish two different pathways to derive citizenship for two distinct categories of individuals: (1) minors who were residing in the United States "pursuant to a lawful admission for permanent residence" and would automatically derive citizenship when their parents naturalized, and (2) minors who at the time their parents naturalized either lived abroad or lived in the United States but had not been "lawfully admitted for permanent residence" and would automatically derive citizenship once they began to "reside permanently in the United States." *Id.* at 921. She states that she derived citizenship under the second pathway, because she entered the United States as a nonimmigrant in 1979 and thereafter "permanently resided" in California with her father, who had legal custody over her and naturalized as a U.S. citizen while she was still under 18 years of age.

We acknowledge the Applicant's assertions, but conclude that *Cheneau* is not dispositive of her citizenship claim as it involved a different set of facts. Specifically, the individual in *Cheneau* applied for adjustment of status when he was 15 years old (following his mother's naturalization), but was not granted such adjustment due to an administrative error until after his 18th birthday. The Ninth Circuit held that the phrase "or thereafter begins to reside permanently in the United States" in the second clause of former section 321(a)(5) of the Act does not require that the child have necessarily been granted lawful permanent residency, although the child must have demonstrated an objective official manifestation of permanent residence, such as applying for adjustment of status to lawful permanent resident status. *Cheneau v. Garland*, 997 F.3.d at 925-26. The Ninth Circuit found that the individual demonstrated such an "objective official manifestation" of an intent to reside permanently in the United States when he filed an application for adjustment of status to that of a lawful permanent resident before he was 18 years old. *Id.* at 925 (citing *Nwozuzu*, 726 F.3d at 334).

Here, the Applicant did not apply for adjustment of status until February 1996, after she had already turned 18 years old. Because the Applicant was over the age limit set in former section 321(a)(5) of

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[5] The Applicant's citizenship proceedings arise within the Ninth Circuit's jurisdiction, which requires the naturalized parent to have sole legal custody of the child in order to satisfy former section 321(a)(3) of the Act requirements. *See U.S. v. Casasola*, 670 F.3d 1023, 1025 (9th Cir. 2012). Although not specifically addressed in the Director's decision, the parents' divorce decree indicates that the court awarded custody solely to the father.

[6] The Second Circuit held in *Nwozuzu v. Holder* that the phrase "begins to reside permanently" in the second clause of former section 321(a)(5) of the Act does not require lawful permanent resident status, though it does require "some objective official manifestation of the child's permanent residence," such as an application for lawful permanent resident status. *Id.* at 323 (citing *Ashton v. Gonzales*, 431 F.3d 95, 98-99 (2d Cir.2005)).

the Act when she demonstrated an "objective official manifestation" of permanent residence through the filing of her adjustment of status application, we cannot conclude that she met the "reside permanently in the United States while under the age of 18 years" requirement in the second pathway to derive citizenship from her father pursuant to the Ninth Circuit's ruling in *Cheneau*.

We recognize the Applicant's claim that she manifested her intent to permanently reside in the United States before she was 18 years old, because she attended public schools in California and her father initiated her "green card" process by filing an immigrant visa petition on her behalf when she was still a minor. However, the holding in *Cheneau* specifically points to applying for adjustment of status to that of a lawful permanent resident as the objective official manifestation of permanent residence required for derivative citizenship under the second pathway in former section 321 of the Act. *Id.* at 925-26. As it does not indicate that an individual's U.S. residence, school attendance, or filing an immigrant visa petition on their behalf before their 18th birthday would similarly qualify as such "objective official manifestation of permanent residence," we cannot conclude that those factors considered individually or collectively are sufficient to satisfy the "reside permanently" requirement in former section 321(a)(5) of the Act.

III. CONCLUSION

The Applicant has not established that she resided in the United States pursuant to a lawful admission for permanent residence when her father naturalized as a U.S. citizen, or that she thereafter began to reside permanently in the United States before she turned 18 years old. The Applicant therefore has not met her burden of proof to establish that she derived U.S. citizenship from her father. As such she is ineligible for issuance of a Certificate of Citizenship, and her Form N-600 remains denied.

ORDER: The appeal is dismissed.