U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27229152

Date: MAY 30, 2023

Appeal of Dallas, Texas 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 U.S. citizen parent under section 320 of the Act, 8 U.S.C. § 1341.

The Director of the Dallas, Texas Field Office denied the application, concluding that the record did not establish that the Applicant had a U.S. citizen parent with a least five years of physical presence in the United States prior to the Applicant turning 18 years of age.[1] 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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

The Applicant seeks a Certificate of Citizenship indicating that he derived U.S. citizenship from a U.S. citizen parent. The Applicant was born in Cuba in [redacted] 2004, and subsequently adopted by two parents in the United States. The Applicant adjusted his status to that of a lawful permanent resident in 2009, and his parents became naturalized U.S. citizens in 2021, when the Applicant was under the age of 18 years.

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). Here, section 320 of the Act, as amended by the Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631 (CCA), applies to the Applicant's derivative citizenship claim, as he was born after the CCA was enacted on February 27, 2001, and both of his parents became U.S. citizens after the provision went into effect.

[1] In addition to concluding that the record lacked evidence that his U.S. citizen parent had at least five years of physical presence in the United States prior to the Applicant's 18th birthday, the Director stated that the Form N-600 was denied based on abandonment because the Applicant did not timely respond to a request for evidence.

Section 320 of the Act, as amended by the CCA, provides, in pertinent part, that:

(a) A child born outside of the United States automatically becomes a citizen of the United States when all of the following conditions have been fulfilled:

(1) At least one parent of the child is a citizen of the United States, whether by birth or naturalization.

(2) The child is under the age of eighteen years.

(3) The child is residing in the United States in the legal and physical custody of the citizen parent pursuant to a lawful admission for permanent residence.

(b) Subsection (a) shall apply to a child adopted by a United States citizen parent if the child satisfies the requirements applicable to adopted children under section 101(b)(1).

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 that 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.

The Director denied the Form N-600, concluding that the Applicant had not shown that he has a U.S. citizen parent with at least five years of physical presence in the United States prior to the Applicant's 18th birthday; however, section 320 of the Act, the statute under which the Applicant seeks approval of his Form N-600, does not have this physical presence requirement.

Because the Director erroneously applied conditions that do not relate to whether or not the Applicant automatically acquired U.S. citizenship under section 320 of the Act conditions, we are returning the matter to the Director to reconsider the Applicant's eligibility under the correct requirements of that statute.

ORDER: The decision of the Director is withdrawn. The matter is remanded for further proceedings consistent with the foregoing analysis.