U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25726353

Date: APR. 20, 2023

Appeal of Baltimore, Maryland 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 adoptive U.S. citizen parents under section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The Director of the Baltimore, Maryland Field Office denied the Form N-600, concluding that the Applicant did not establish he was re-adopted in the United States, as required to qualify to as his parents' adopted child for derivative citizenship purposes. The matter is now before us on appeal.

The Applicant submits additional evidence and asserts that his foreign adoption was final or, in the alternative that readoption was not required in the State of Maryland where he has been residing with his adoptive parents since he was admitted to the United States as a lawful permanent resident.

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 shows that in July 2001, the Applicant's adoptive father filed a Form I-600A, Application to File Petition for Eligible Orphan, which was approved. The Applicant was born in Guatemala in [redacted] 2002. The evidence below includes a deed of adoption, which reflects that in [redacted] 2002 the attorney representing the Applicant's adoptive parents adopted the Applicant on their behalf.[1] The record further shows that a month later the Applicant's adoptive father traveled to Guatemala and filed a Form I-600, Petition to Classify Orphan as an Immediate Relative, with a local overseas U.S. Citizenship and Immigration Services (USCIS) office. The petition was approved affording the

[1] The deed of adoption provides in part that the adoptive parents' representative "takes in adoption the minor, who from this moment will be under her charge and acting as adoptive mother of the minor, who assumes all the inherent responsibilities of mother, as well as patria potestas over the minor, who from this date will use the last name of [his] adoptive parents . . . ."

Applicant an IR-4 immigrant classification—orphan to be adopted by a U.S. citizen.[2] In [redacted] 2002, at the age of five months, the Applicant was admitted to the United States for permanent residence as an IR-4 immigrant.

To determine whether the Applicant derived U.S. citizenship from his parents based on those facts, we apply the law in effect "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). Because the last qualifying event is the Applicant's admission to the United States for permanent residence in 2002, we consider his citizenship claim under current section 320 of the Act, as in effect since 2001.

Section 320 of the Act provides 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), [8 U.S.C. § 1101(b)] .

Because the familial relationship between the Applicant and his U.S. citizen parents was created by adoption, the Applicant must satisfy the requirements in section 320(b) of the Act. The term "adopted child" for derivative citizenship purposes means a person who has been adopted pursuant to a full, final, and complete adoption, and who also meets the requirements of section 101(b)(1)(E) or (F) of the Act. 8 C.F.R. § 320.1. Section 101(b)(1) of the Act provides in part that a child must be in the legal custody of, and reside with the adopting parent or parents for at least two years to derive U.S. citizenship. In the case of an adopted child, legal custody will be presumed based on the existence of a final adoption decree. 8 C.F.R. § 320.

II. ANALYSIS

There is no dispute that the Applicant resided in the United States with his U.S. citizen parents as a lawful permanent resident before he was 18 years old. The contested issue on appeal is whether he has demonstrated that he meets the derivative citizenship conditions in section 320(b) of the Act applicable to adopted children. We have reviewed the entire record, as supplemented on appeal and conclude

[2] The annotation on the Form I-600 states: "The petition is approved for orphan coming to U.S. for adoption. Preadoption requirements have been met."

that the Applicant has not shown that he satisfied those conditions during the relevant period before his 18th birthday, as required to derive citizenship.

As a preliminary matter, to petition for a foreign-born child to immigrate to the United States based on adoption, a prospective adoptive parent (PAP) must have either (1) a final adoption granted by the foreign-sending country, or (2) legal custody of the child granted by the foreign-sending country for emigration and adoption in the United States. *See generally* 5 *USCIS Policy Manual* C.5(A)-(B), https://www.uscis.gov/policy-manual (explaining the differences between qualifying adoptive and custodial relationships for immigrant visa purposes).

A. IR-4 Immigrant Visa Classification

The record shows and the Applicant does not dispute that he was admitted to the United States in the IR-4 immigrant classification, which required his parents to readopt him in the United States.

The Applicant nevertheless asserts that his adoption in Guatemala was final, that a consular officer erred by issuing him an IR-4 visa (rather than IR-3 visa—orphan adopted abroad by a U.S. citizen), and that readoption therefore was not required. In support, he references a "Visa 37 cable" a Baltimore Field Office adjudicator sent to the U.S. Embassy in Guatemala in February 2002, noting that there are "no preadoption requirements in the State of Maryland."[3] However, as the Applicant does not explain the relevance of the state *pre*adoption requirements to the IR-4 immigrant classification and the U.S. *re*adoption requirement for the purposes of derivative citizenship under section 320 of the Act, we are unable to meaningfully address this claim. Moreover, the Applicant's assertion that his IR-4 immigrant visa was issued in error is unpersuasive in view of the Form I-600 approval which reflects the USCIS' determination he was eligible for IR-4 immigrant classification based on the circumstances and evidence in his case.

As stated, the record shows that the Applicant was adopted on behalf of his adoptive parents in [redacted] 2002 by their legal representative before his adoptive father traveled to Guatemala in June 2002. An adoption in which neither adoptive parent actually saw and observed the child before or during the adoption is known as a proxy adoption. *See* 5 *USCIS Policy Manual* C.5(A) n.4, *supra*. While this type of adoption may be fully valid in the United States as a matter of domestic relations law, a child adopted through this process is not eligible to immigrate under the basis of a "full and final" adoption and receive an IR-3 visa. *Id.* However, a child with a final adoption order that is not considered "full and final" may be eligible to immigrate and receive an IR-4 visa. *Id.*[4]

[3] The Notice of Favorable Disposition Concerning Application for Advance Processing of Orphan Petition attached to the cable instructed the Applicant's adoptive father to file a Form I-600 on the Applicant's behalf with the USCIS office or American Consulate or Embassy in Guatemala.

[4] *See also* U.S. Department of State, FAQ: *Adoptions by Prospective Adoptive Parents Who Reside Outside of the United States*, https://travel.state.gov/content/travel/en/Intercountry-Adoption/adoption-professionals/adoptions-by-prospective-adoptive-outside-us.htmlwww.travel.state.gov (explaining that U.S. Department of State will issue an IR-4 visa where prospective U.S. citizen adoptive parent or parents have legal custody of a child and will complete the final adoption in the United States, no parent has seen and observed the child before or during the adoption proceedings, or only one parent of a married couple adopted the child abroad).

Based on the above, we conclude that the Applicant has not shown that he was admitted to the United States in the wrong immigrant category, and that he was therefore not subject to the U.S. readoption requirement.

B. Waiver of the Readoption Requirement

The regulation at 8 C.F.R. § 320.1 provides that if a foreign adoption of an orphan was not full and final, or U.S. citizen parent and spouse jointly did not see and observe the child in person prior to or during the foreign adoption proceedings, the child is not considered to have been fully, finally and completely adopted and must be readopted in the United States. However, the readoption requirement may be waived if the state of residence of the United States citizen parent(s) recognizes the foreign adoption as full and final under that stat's adoption laws. *Id.*

The Applicant avers that even if his adoption in Guatemala was not considered "full and final" he meets the readoption waiver criteria under 8 C.F.R. § 320.1, because the State of Maryland where his adoptive parents resided before his 18th birthday gives full faith and credit to foreign adoptions. In support, he references section 5-305(c)(1) of the Maryland Code, and our 2002 non-precedent decision in an unrelated case.[5] We acknowledge the submission of this additional evidence, but conclude that it is insufficient to show that the Applicant was eligible for the readoption requirement waiver.

Section 5-305(c)(1) of the Maryland Code, as in effect since 2006 and applicable to *Guardianship to and Adoption Through Local Department* provides that "an order for adoption or guardianship entered in compliance with the jurisdiction's laws shall have the same legal effect as an order for adoption or guardianship entered in this State." But the Applicant offers no evidence that this Maryland law provision applies to him as a child adopted through a "local department." We note that contrary to the Applicant's claim that his parents were not required to readopt him in Maryland, section 5-3B-04 of the Maryland Code, as in effect since 2006 and applicable to *Independent Adoption*, specifically provides with respect to foreign orders that an individual is not required to petition a court in Maryland for adoption of an adoptee only if: (1) the individual adopted the adoptee in compliance with the laws of a jurisdiction other than a state; **and** (2) *the United States Citizenship and Immigration Services verifies the validity of that adoption by granting, under the federal Immigration and Nationality Act, an IR-3 visa for the adoptee*. Md. Code Ann. Family Law § 5-3B-04(d). (Emphases added).

Here, the record shows that the Applicant was lawfully admitted to the United States with an IR-4 immigrant visa, and not with an IR-3 immigrant visa. As discussed above, he has not demonstrated that his IR-4 visa was issued in error, nor has he shown that his adoption in Guatemala was recognized under Maryland law as final, such that the IR-4 visa readoption requirement may be waived for the purposes of derivative citizenship under section 320 of the Act.

[5] This decision was not published as a precedent and therefore does not bind USCIS officers in future adjudications. *See* 8 C.F.R. § 103.3(c). Non-precedent decisions apply existing law and policy to the specific facts of the individual case, and may be distinguishable based on the evidence in the record of proceedings, the issues considered, and applicable law and policy.

III. CONCLUSION

The Applicant has not met his burden of proof to establish that that he satisfied the requirements to derive citizenship through his adoptive U.S. citizen parents under section 320 of the Act, because he has not shown that his parents readopted him in the United States, or that the readoption requirement was waived pursuant to the law of the state of his parents' residence. Consequently, the Applicant is ineligible for a Certificate of Citizenship and his Form N-600 remains denied.

ORDER: The appeal is dismissed.