U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27459542

Date: AUG. 21, 2023

Appeal of Hartford, Connecticut Field Office Decision

Form N-600, Application for Certificate of Citizenship

The Applicant seeks a Certificate of Citizenship to reflect that he acquired U.S. citizenship from a U.S. citizen parent under former section 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432.

The Director of the Hartford, Connecticut Field Office denied the application, concluding that the Applicant could not have derived U.S. citizenship solely from his mother, as claimed, because the record showed that he had been legitimated by his father and therefore the Applicant did not satisfy the former section 321(a)(3) of the Act out-of-wedlock without legitimation conditions. The Director also determined that the Applicant did not establish that he derived citizenship under section 320 of the Act because he had turned 18 years of age before the effective date of February 27, 2001, whereas the statute applies to individuals who were not yet 18 years of age on that date.

The Applicant provides a copy of a letter from his father and asks whether it is sufficient to establish that he meets former section 321(a)(3) of the Act out-of-wedlock conditions. He does not dispute the Director's separate conclusion that he is ineligible for a Certificate of Citizenship under section 320 of the Act.[1]

Upon de novo review, we will dismiss the appeal.

I. LAW

The record reflects that the Applicant was born in Haiti in [redacted] 1982, to unmarried foreign national parents. The Applicant subsequently entered the United States as a lawful permanent resident in 1989, and his mother became a naturalized U.S. citizen in 1990 while the Applicant was still under

[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Stat. 1631 (Oct. 30, 2000), which took effect on February 27, 2001, amended former sections 320 and 322 of the Act, and repealed former section 321 of the Act.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, the Director properly noted that he is not eligible for the benefits of the amended Act. *See Matter of Rodriguez-Tejedor,* 23 I&N Dec. 153 (BIA 2001).

the age of 18 years. 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.

The applicable law for derivative citizenship purposes is "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). Based on the Applicant's year of birth in 1978 and the year when he turned 18 (1996), 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:
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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 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-
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> (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.

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. *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. *Matter of Chawathe,* 25 I&N Dec. 369, 376 (AAO 2010).

II. ANALYSIS

The Applicant meets some of the conditions at former section 321(a) of the Act. Certificate of Naturalization evidence and the Applicant's birth certificate show that his mother became a naturalized U.S. citizen in 1990 when the Applicant was under the age of 18 years, as required by former section

321(a)(4) of the Act. A copy of the Applicant's lawful permanent resident card shows that he was admitted to the United States as a lawful permanent resident in 1989, prior to his mother's 1990 naturalization and before he turned the age of 18 in [redacted] 1996. Therefore, he has satisfied former section 321(a)(5) of the Act lawful admission conditions. The Applicant does not claim to have derived citizenship under the parental citizenship requirements of former sections 321(a)(1) and (a)(2) of the Act, and the record does not demonstrate eligibility under either section. In addition, the Applicant does not claim U.S. citizenship through his mother pursuant to the legal custody after a legal separation conditions for derivative citizenship under former section 321(a)(3) of the Act. Instead, he claims to meet the out-of-wedlock without legitimation provisions at former section 321(a)(3) of the Act. Therefore, the sole issues on appeal are whether the Applicant has established that he satisfied the former section 321(a)(3) of the Act out-of-wedlock without legitimation conditions.

A. Born Out of Wedlock

The Applicant claims that his parents never married each other, and that his mother was married to, and has since divorced, the Applicant's stepfather. The Applicant's birth certificate indicates that he was born out of wedlock, in that it states that he is the natural child of his father, and his mother's Certificate of Naturalization does not reflect that she was married when she took the oath of naturalization. Thus, the record sufficiently demonstrates that the Applicant was born out of wedlock, and that his parents did not marry each other.

B. Legitimation

Former section 321(a)(3) of the Act provides that an out-of-wedlock child may derive citizenship through the naturalization of an unwed mother if "the paternity of the child has not been established by legitimation." In this case, the Applicant was born in [redacted] 1978, his birth and parentage were registered in Haiti in December 1978, and his mother naturalized in 1990. Therefore, the issue is whether he was legitimated at the time his mother naturalized, as an applicant who is the child of an unwed mother may not be legitimated prior to the date of her naturalization in order to meet former section 321(a)(3) of the Act out-of-wedlock conditions.

The Applicant's initial submission included an Excerpt from the Birth Certificates Registrars showing that his father appeared before the Civil Registrar of Vital Records in [redacted] Haiti in July 1992, and that the father registered the Applicant's birth and his own parentage. The specific information in the birth certificate reflects that the Applicant was born in [redacted] Haiti in [redacted] 1978, and that his father declared the Applicant to be his natural son at the time he registered the Applicant's birth. The Director denied the Form N-600, concluding that the birth registration certificate showed that the Applicant had been legitimated by his father in 1978, prior to the mother's naturalization in 1990, and therefore he did not meet the former section 321(a)(3) of the Act out-of-wedlock conditions, which require his paternity not to have been established by legitimation when his mother naturalized.

As of January 27, 1959, all persons born out-of-wedlock in Haiti and acknowledged by their natural fathers are deemed to be legitimate children. *Matter of Richard*, 18 I&N Dec. 208 (BIA 1982); *see also Matter of Cherismo*, 19 I&N Dec. 25, 26 (BIA 1984) (explaining that a father's acknowledgement of his paternity of a natural child before the Civil Registrar in Haiti constitutes legitimation under Haitian law).

On appeal, the Applicant provides a letter from his father, who states that he gives authorization to anyone to accompany the Applicant to the United States so that the Applicant may find and reside with the Applicant's mother. The Applicant asks whether this document is sufficient to show his eligibility for approval of the Form N-600 application. However, the issue on appeal is whether the Applicant meets the out-of-wedlock without legitimation condition at former section 321(a)(3) of the Act. The letter from his father does not contradict the information in the Applicant's own birth registration certificate showing that the Applicant was acknowledged by his father on the birth registration certificate and that he therefore has been legitimated by his father under the laws of Haiti prior to his mother's 1990 naturalization. As a consequence, the Applicant does not meet the out-of-wedlock without legitimation conditions at former section 321(a)(3) of the Act and therefore has not established that he derived U.S. citizenship from his mother. For this reason, the Form N-600 remains denied.

ORDER: The appeal is dismissed.