U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28859530

Date: DEC. 5, 2023

Appeal of Long Island, New York 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 father under section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The Director of the Long Island, New York Field Office denied the Form N-600, Application for Certificate of Citizenship (Form N-600), concluding that the Applicant did not establish he automatically derived citizenship from his naturalized U.S. citizen father pursuant to section 320 of the Act because he was not placed in his father's legal custody, as required. 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 dismiss the appeal.

I. LAW

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). In the present matter, the Applicant was born in the Dominican Republic in [redacted] 2005, to married foreign national parents. The Applicant's parents divorced in [redacted] 2012, he was admitted to the United States as a lawful permanent resident (LPR) in September 2017, and his father became a U.S. citizen in March 2022. Accordingly, section 320 of the Act, as amended by the Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000) (CCA), which became effective on February 27, 2001, applies to his case.

The CCA repealed former section 321 of the Act and amended, in part, former section 320 of the Act. The amendments to section 320 of the Act took effect on February 27, 2001, and apply to individuals who satisfy the requirements of section 320 of the Act, as in effect on that date. *Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153, 157 (BIA 2001).

Section 320 of the Act, as amended in February 2001 and currently in effect, 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.

Moreover, applicants must meet the definition of a "child" in section 101(c)(1) of the Act, 8 U.S.C. § 1101(c)(1), which defines the term "child" in pertinent part to mean "an unmarried person under twenty-one years of age and includes a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in the United States or elsewhere[.]" The applicant must have either a biological or legal adoptive relationship with the claimed U.S. citizen parent. *See Matter of Guzman-Gomez*, 24 I&N Dec. 824, 826 (BIA 2009) (determining that "child" as defined under section 101(c) of the Act encompasses biological or legal adoptive children, but not stepchildren). A child born in wedlock is considered to be a legitimate child. *See Matter of Kubicka*, 14 I&N Dec. 303, 304 (BIA 1972) ("A 'legitimate' child is, of course, a child 'born in wedlock' . . . .") (quoting Webster's New Dictionary, 1971).

The regulation at 8 C.F.R. § 320.1 defines "legal custody" as "refer[ring] to the responsibility for and authority over a child." It further provides that, for purposes of the CCA, U.S. Citizenship and Immigration Services (USCIS) will presume that a U.S. citizen parent has legal custody of child, and will recognize that U.S. citizen parent as having lawful authority over the child, absent evidence to the contrary, in the case of:

> (i) A biological child who currently resides with both natural parents (who are married to each other, living in marital union, and not separated),
>
> (ii) A biological child who currently resides with a surviving natural parent (if the other parent is deceased), or
>
> (iii) In the case of a biological child born out of wedlock who has been legitimated and currently resides with the natural parent.

8 C.F.R. § 320.1 further provides that, in the case of a child of divorced or legally separated parents, USCIS will:

> [F]ind a U.S. citizen parent to have legal custody of a child, for the purpose of the CCA, where there has been an award of primary care, control, and maintenance of a minor child to a parent by a court of law or other appropriate government entity pursuant to the laws of the state or country of residence. [USCIS] will consider a U.S. citizen

> parent who has been awarded "joint custody," to have legal custody of a child. There may be other factual circumstances under which [USCIS] will find the U.S. citizen parent to have legal custody for purposes of the CCA.

Generally, to derive U.S. citizenship, a foreign-born child must satisfy certain statutory conditions before turning 18 years of age. A child's acquisition of citizenship on a derivative basis occurs by operation of law and not by adjudication. *Matter of Fuentes-Martinez*, 21 I&N Dec. 893, 896 (BIA 1997). Thus, a child who satisfies requisite conditions will derive U.S. citizenship automatically, even though the actual determination of derivative citizenship may occur after the fact, in the context of a passport application or a claim to citizenship. *Id.*

Applicants born abroad are presumed to be foreign nationals and bear the burden of establishing their claim to U.S. citizenship by a preponderance of credible evidence. *See Matter of Baires-Larios*, 24 I&N Dec. 467, 468 (BIA 2008). The "preponderance of the evidence" standard requires that the Applicant establish that their claim is "probably true," based on the specific facts of their case. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (citing *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989)).

II. ANALYSIS

The Applicant is seeking a Certificate of Citizenship indicating that he derived U.S. citizenship from his U.S. citizen father. The Applicant was born in the Dominican Republic in [redacted] 2005, to married foreign national parents. The Applicant's parents divorced in [redacted] 2012, in the Dominican Republic. The Applicant was admitted to the United States as an LPR in September 2017 and his father became a U.S. citizen through naturalization in March 2022.

The record reflects that the Applicant has established that he meets several requirements for derivative citizenship under section 320 of the Act. Specifically, birth and marriage certificates show the biological parent-child relationship between the Applicant and his father (and mother), that he was born abroad, and that he remained under 18 years of age through February 2023. Further, the Applicant was admitted to the United States as an LPR in September 2017, when he was 12 years old, and his father naturalized in March 2022, when he was 17 years old. Therefore, the Applicant qualifies as his father's "child" under section 101(c) of the Act and satisfies the requirements of section 320(a)(1) and (2) of the Act. At issue is whether the Applicant has shown that his father had legal custody over him prior to his 18th birthday.

As stated above, the regulations provide that legal custody "refers to the responsibility for and authority over a child." *See* 8 C.F.R. § 320.1 (defining "legal custody"). Under the same regulation, legal custody is presumed "[i]n the case of a child of divorced or legally separated parents . . . where there has been an award of primary care, control, and maintenance of a minor child to a parent by a court of law or other appropriate government entity pursuant to the laws of the state or country of residence." Additionally, 8 C.F.R. § 320.1 provides that U.S. Citizenship and Immigration Services considers "the U.S. citizen parent who has been awarded 'joint custody' to have legal custody of the child." Moreover, legal custody "implies either a natural right or a court decree." *Matter of Harris,* 15 I&N Dec. 39, 41 (BIA 1970). In this case, the Applicant has the burden of proof to establish that his father was granted legal custody of the Applicant pursuant to the laws of the

Dominican Republic, the location of his parents' divorce. *See* 8 C.F.R. § 320.3(b)(vi) (providing that an applicant must provide documentation of legal custody).

The Divorce Certificate, issued in the Dominican Republic, indicates that the Applicant's parents' divorce was finalized in [redacted] 2012. The September 2012 judicial divorce hearing specifically includes a determination concerning the legal custody and parental responsibility over the Applicant. Specifically, it states that "the mother has de facto custody of the minors . . . guardianship and care is granted to the defendant mother, Mrs. N-H-S-, until [they] come of age or legal emancipation." Aside from the judicial divorce hearing, the record does not contain any additional evidence to establish that the Applicant's father at any time obtained an amended court order or was otherwise awarded legal custody over the Applicant.

On appeal, the Applicant contends that his mother transferred legal custody to his father in a letter dated September 2017, when the Applicant came to the United States to reside with his father and step-mother as an LPR. The Applicant's mother further explains that she had custody of the Applicant when she divorced his father in 2012, but the Applicant has been residing with his father in the United States since September 2017. She asserts that she gave the Applicant's father authorization over his legal and physical custody since then. The Applicant submits a notarized letter titled *Travel Authorization*, dated August 2017, stating that his mother "authorize[s] and give[s] power of attorney as broad as by law to [his] father . . . domiciled and resident in the United States . . . so that in the company of [their] minor children . . . [the Applicant], born [in [redacted] 2005] . . . can travel to the United States of America . . . with departure date September 4 at 1:33 arriving in New York USA." It further states that "this authorization is fully valid before any [immigration] officer or functionary, both Dominican and foreign." The Applicant also submits copies of his father's Internal Revenue Service (IRS) Tax Return Forms (IRS Forms) for the years 2017 through 2022, indicating that he claimed the Applicant as a dependent during those years; a letter from the Applicant's pediatrician indicating that his father is his parent of record in their files and residing at the same address; and a letter from [redacted] Public Schools indicating that the Applicant's father was listed as his parent/guardian of record during his time of attendance (he graduated high school in June 2022).

Upon de novo review, the Applicant has not established, by a preponderance of the evidence, that he was in the actual, uncontested legal custody of his U.S. citizen father prior to his 18th birthday. As provided for above, the judicial divorce hearing making a determination of custody specifically grants legal custody to the Applicant's mother. Although the Applicant's mother claims that she transferred legal custody to his father based on the notarized *Travel Authorization* letter, dated September 2017, the Applicant has not submitted any court documents upon which the notarized letter relies in discharging his mother from her court ordered duties and transferring the parental responsibility of legal custody to his father. In fact, the letter merely appears to grant the Applicant's father authorization from the Applicant's legal custodian, his mother, to travel abroad with the Applicant. Further, the letters from the Applicant's school and pediatrician indicating that his father is listed as parent/guardian, and his father's U.S. tax returns claiming the Applicant as a dependent, are not sufficient to demonstrate that his father had legal custody over the Applicant prior to his 18th birthday. Here, the Applicant has not provided evidence of a judicial modification of the custody determination, as required to demonstrate that his U.S. citizen father satisfied section 320(a)(3) of the Act's legal custody requirements.

III. CONCLUSION

The Applicant has not shown that he automatically derived citizenship from his naturalized U.S. citizen father pursuant to section 320 of the Act because he did not demonstrate that his U.S. citizen father had actual uncontested legal custody over him before his 18th birthday. As such, the Applicant is ineligible for a Certificate of Citizenship and his Form N-600 remains denied.

ORDER: The appeal is dismissed.