U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24546200

Date: MARCH 2, 2023

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

The Director of the Queens, New York Field Office denied the application, concluding that the Applicant did not establish eligibility for a Certificate of Citizenship because he did not provide sufficient evidence to explain and resolve his date of birth discrepancy. The matter is now before us on appeal. 8 C.F.R. § 103.3.

On appeal, the Applicant asserts that the date of birth discrepancy is not material to his citizenship claim, as he was under the age of 18 years in 2014 when he was admitted to the United States for permanent residence and thus fulfilled the last condition for derivative citizenship in section 320 of the Act.

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 Applicant was born in Bangladesh to noncitizen parents. His father naturalized as a U.S. citizen in 2012 and subsequently filed a Form I-130, Petition for Alien Relative (visa petition) on the Applicant's behalf to classify him as his child for immigration purposes. The documents in support of the visa petition included the parents' 2003 marriage certificate, as well as the Applicant's birth certificate registered in Bangladesh in 2009 indicating that he was born there in 2004. U.S. Citizenship and Immigration Services (USCIS) approved the visa petition, and in 2014 the Applicant was admitted to the United States as a permanent resident child of a U.S. citizen (IR2). In 2020 the Applicant filed the instant Form N-600 representing that he was born in 2000, and submitted another birth certificate registered in Bangladesh in 2017 with the 2000 date of birth.

In adjudicating the Applicant's citizenship claim 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 admission to the United States for permanent residence in 2014. Accordingly, we consider his derivative citizenship claim under section 320 of the Act, as in effect since 2001.

Section 320 of the Act 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:
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> (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.

Because the Applicant was born abroad, he is presumed to be a noncitizen and bears the burden of establishing his claim to U.S. citizenship by a preponderance of credible evidence. *Matter of Baires-Larios,* 24 I&N Dec. 467, 468 (BIA 2008). Under the preponderance of the evidence standard, the Applicant must demonstrate that his citizenship claim is "probably true." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). This includes demonstrating that he meets the definition of a "child" in section 101(c)(1) of the Act, 8 U.S.C. § 1101(c)(1).

II. ANALYSIS

The issue on appeal is whether the Applicant has met his burden of proof to establish that he fulfilled all of the requirements in section 320 of the Act to derive U.S. citizenship from his father. Upon review of the entire record and the Applicant's statements on appeal, we conclude that he has not met that burden.

As stated, the record contains two birth certificates for the Applicant with two different dates of birth. The Director issued a notice of continuance asking the Applicant to submit additional evidence including his original birth certificate, the oldest available birth-related documents such as baptismal, hospital, and early school records, and affidavits to resolve the inconsistent information. The Applicant responded, but the Director determined that the response was inadequate to establish the Applicant's true date of birth and denied his request for a Certificate of Citizenship.

The Applicant does not point to any specific errors in the Director's determination, aside from stating generally that he previously "submitted significant evidence to support his claim that his date of birth

was [redacted] 2000 [sic]."[1] He asserts that his date of birth is a "nonmaterial ambiguity" and whether he was actually born in 2004 or 2000 is irrelevant to his citizenship claim because he was "without question clearly and absolutely under the age of 18 on December 22, 2014," when he was admitted to the United States as a lawful permanent resident. We disagree.

As an initial matter, because the Applicant is claiming derivative citizenship as his father's biological child, he must establish the requisite parent-child relationship with his father. However, as both his birth certificates were registered late (5 and 17 years after his birth in either 2004 or 2000, respectively) neither certificate has the same evidentiary weight as one issued contemporaneously with the actual event. *Matter of Lugo-Guadiana*, 12 I&N Dec. 726, 729 (BIA 1968). A delayed birth certificate does not necessarily offer conclusive evidence of paternity even if it is unrebutted by contradictory evidence; it must instead be evaluated in light of the other evidence of record and the circumstances of the case. *Matter of Bueno-Almonte*, 21 I&N Dec. 1029, 1033 (BIA 1997); *Matter of Rehman*, 27 I&N Dec. 124, 128 (BIA 2017) (listing types of secondary evidence to establish parentage in visa proceedings, including historical evidence issued contemporaneously with the birth or other event that it documents, such as medical records, school records, religious documents, affidavits by those with personal knowledge of the event, and DNA evidence).

As stated, the Director found the secondary evidence inadequate to establish the Applicant's true date of birth, and the Applicant does not offer any additional documents on appeal to overcome this determination. Accordingly, the Applicant has not met his burden of proof to show that either of his late-registered birth certificates contains correct information about his date of birth and his paternity.

Furthermore, the timing of the Applicant's birth and his parents' marriage is material to determining whether the Applicant qualifies as his father's "child" for the purposes of derivative citizenship. The term "child," as used in section 320 of the Act includes children who were born in wedlock, as well as those who were born out of wedlock and legitimated under the law of their residence or domicile, or under the law of the father's residence or domicile, whether in the United States or elsewhere, if such legitimation takes place before the age of 16 years.[2] Section 101(c)(1) of the Act.

Consequently, if the Applicant was born in 2000 before his parents' 2003 marriage, he was born out of wedlock and must establish that he qualifies as his father's biological legitimated child in order to derive citizenship from his father. Here, the Applicant has not provided evidence to show that his father legitimated him either in Bangladesh,[3] or in the United States.

Lastly, the Applicant's date of birth is relevant in determining whether he was lawfully admitted to the United States for permanent residence, as required in section 320(a)(3) of the Act.

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[1] We note that the 2017 birth certificate the Applicant submitted with the Form N-600 indicates that he was born in [redacted] 2000.

[2] Because all of the conditions in section 320 of the Act must be satisfied before the child's 18th birthday, USCIS allows legitimation for the purposes of section 320 of the Act to occur until the age of 18 years. *See generally* 12 *USCIS Policy Manual* H.2(B) n. 17, https://www.uscis.gov/policy-manual.

[3] We note that according to an advisory opinion from the Law Library of Congress (LL File No. 2011-005299), *Status of Children Born out of Wedlock*, legitimacy in Bangladesh is determined according to Sharia law, which does not provide for legitimation of a child born out of wedlock.

The term "lawfully admitted for permanent residence" means the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed. Section 101(a)(20) of the Act. If at the time a noncitizen is accorded permanent resident status they are not entitled to such status, the noncitizen cannot be considered lawfully admitted for permanent residence. *See Matter of Koloamatangi*, 23 I&N Dec. 548, 550 (BIA 2003); *De La Rosa v. U.S. Dep't of Homeland Sec.*, 489 F.3d 551, 555 (2d Cir.2007).

Here, at the time of filing the immigrant visa petition on the Applicant's behalf in 2012, his father represented that the Applicant was born in 2004, a year after his parents married, and submitted the Applicant's birth certificate with the 2004 date of birth in support of that representation. As stated, USCIS approved the visa petition based on the father's claim that the Applicant was his child born in wedlock, and the U.S. Department of State subsequently issued an immigrant visa to the Applicant on that basis. However, if the Applicant was born in 2000, as he now claims, he was born out of wedlock and would have to meet different eligibility criteria to qualify as his father's "child" for immigrant visa purposes. *See* section 101(b) of the Act (defining the term "child" in the context of immigrant visa proceedings).

We note that in a previously provided affidavit, the Applicant's father attested that he was present at the Applicant's birth in 2000, and that he subsequently visited the Applicant in Bangladesh prior to 2004. However, the father did not explain why despite witnessing the Applicant's birth in 2000 he claimed in the visa petition proceedings that the Applicant was born in 2004, and how he obtained the birth certificate reflecting that date of birth. As the Applicant does not address this inconsistency on appeal, the record remains insufficient to determine whether he was eligible for an immigrant classification as his father's "child" and, thus whether his admission to the United States for permanent residence in 2014 was lawful.

An individual seeking immigration benefits must resolve inconsistencies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Given the unresolved issues discussed above, we conclude that the record does not currently establish that the Applicant satisfied all of the conditions in section 320 of the Act to derive U.S. citizenship from his father, as he claims.

A person may only obtain citizenship in strict compliance with the statutory requirements imposed by Congress. *INS v. Pangilinan*, 486 U.S. 875, 885 (1988). Because citizenship "once granted cannot lightly be taken away," any "doubts [about the claimed citizenship] should be resolved in favor of the United States and against the claimant." *Berenyi v. INS*, 385 U.S. 630, 637 (1967) (citing *United States v. Macintosh*, 283 U.S. 605, 626, (1931)).

The Applicant has not met his burden of proof to show that he derived U.S. citizenship from his father. Consequently, he is ineligible for a Certificate of Citizenship and his Form N-600 remains denied.

ORDER: The appeal is dismissed.