U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25232629

Date: MARCH 29, 2023

Appeal of West Palm Beach 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 under former section 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432.[1] To establish derivative citizenship under former section 321 of the Act, applicants must show that they satisfied certain statutory conditions before turning 18 years of age, including naturalization of both parents, unless they can establish that they meet specific statutory criteria to derive citizenship from only one naturalized parent.

The Director of the West Palm Beach Field Office in Royal Palm Beach, Florida denied the application, concluding that the Applicant did not establish derivative citizenship because only his father naturalized as a U.S. citizen before the Applicant's 18th birthday.[2] The matter is now before us on appeal.

On appeal, the Applicant does not contest he was ineligible to derive citizenship from both parents. Instead, he asserts for the first time that he derived citizenship solely from his father because his parents were separated and his father had legal custody.

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 reflects that the Applicant was born abroad in [redacted] 1981 to married noncitizen parents. His father naturalized as a U.S. citizen in 1996. In April 1998, at the age of 17 years the Applicant

[1] *Repealed by* Sec. 103(a), title I, Child Citizenship Act of 2000 (CCA), Pub. L. No. 106-395, 114 Stat. 1631 (2000).

[2] The Director further found that the Applicant was also ineligible to derive citizenship under current section 320 of the Act, 8 U.S.C. § 1431, and the Applicant does not dispute this finding on appeal. *See Matter of Rodriguez-Tejedor,* 23 I&N Dec. 153 (BIA 2001) (holding that current section 320 of the Act applies only to individuals who were not yet 18 years old as of February 27, 2001). The Applicant was 19 years old by the time the current section 320 of the Act went into effect on that date, so we agree with the Director that the Applicant is ineligible to derive citizenship under current section 320 of the Act.

adjusted his status to that of a lawful permanent resident child of a U.S. citizen (in IR-7 immigrant classification). The Applicant's mother did not naturalize until 2006, when he was already over the age of 18 years. As stated, the Applicant is claiming derivative citizenship solely through his father.

To determine whether the Applicant derived U.S. citizenship, we apply the law in effect when the last material condition for derivative citizenship was met. *Levy v. U.S. Attorney General*, 882 F. 3d 1364, 1366 n. 1 (11th Cir. 2018).

The last material condition the Applicant fulfilled before turning 18 years of age in [redacted] 1999, is his admission to the United States for permanent residence in 1998, when former section 321 of the Act governed derivative citizenship. Former section 321(a) of the Act provided in relevant part that a child born abroad to noncitizen parents would become a U.S. citizen upon fulfillment of the following conditions:

> (1) The naturalization of both parents; or
>
> (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*. . . ; and if-
>
> (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.

(Emphasis added).

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 claim is "probably true," or "more likely than not." *Matter of Chawathe*, 25 I&N Dec. at 376.

II. ANALYSIS

The issue on appeal is whether the Applicant has met the above burden of proof to establish that he derived U.S. citizenship solely from his father under the first clause of former section 321(a)(3) of the Act. Upon review of the record of proceedings, including the Applicant's statements on appeal, we conclude that he has not.

As an initial matter, the term "legal separation" in the context of derivative citizenship proceedings under former section 321(a)(3) of the Act means either a limited or absolute divorce obtained through

judicial proceedings. *See Matter of H-*, 3 I&N Dec. 742, 743-44 (BIA 1949). The Applicant's citizenship proceedings arise within the jurisdiction of the U.S. Court of Appeals for the Eleventh Circuit, which similarly held that "[l]egal separation [under former section 321(a)(3) of the Act] is a bright line marking the disunion of a married couple." *Levy v. U.S. Attorney General*, 882 F.3d at 1368; *see also Morgan v. Attorney General*, 432 F.3d 226, 231–32 (3d Cir. 2005) (holding that "legal separation" is "a formal governmental action, such as a decree issued by a court of competent jurisdiction that, under the laws of a state or nation having jurisdiction over the marriage, alters the marital relationship of the parties.")

Here, the record reflects that the Applicant's parents were married in Chile in 1980, and remained married to each other when his father naturalized in 1996, as reflected on the father's Certificate of Naturalization. The Applicant provides no evidence that his parents divorced at any time before his 18th birthday or that their marital relationship was otherwise terminated, dissolved, or altered through a formal governmental action before he turned 18 years of age.

The Applicant asserts that his parents were separated at the time he obtained lawful permanent resident status in 1998, but offers no further details or corroborating evidence. We note that the record includes his parents' 1996-1997 federal income tax returns, which they filed jointly indicating they were married and resided at the same address in Florida with the Applicant and his sibling. The record also contains a notarized Form I-134, Affidavit of Support his father executed in July 1997, stating under oath that the family resided together in Florida, as well as the parents' 1997 Forms W-2, Wage and Tax Statement, which similarly reflect their common residence.

The Applicant's unsupported claim that his parents were "legally separated" because they lived "separate and apart" in Florida, a state which he asserts does not recognize legal separation, is not sufficient to establish that he meets threshold requirement of the parents' "legal separation" to derive citizenship solely from his father under former section 321(a)(3) of the Act. *See e.g.*, *Matter of Mowrer*, 17 I&N Dec. 613, 614 (BIA 1981) (a married couple that simply lives apart with no plans of reconciliation is not "legally separated.").

In conclusion, the Applicant has not met his burden of proof to show that his parents were "legally separated" within the meaning of former section 321(a)(3) of the Act at any time after his father naturalized as a U.S. citizen and before the Applicant turned 18 years old. Because the Applicant is ineligible to derive citizenship from his father on that basis alone, we need not address at this time whether his father satisfied the separate legal custody requirement in the same section of the Act.[3]

ORDER: The appeal is dismissed.

[3] Instead, reserve the issue. Our reservation is not a stipulation that the Applicant established his father's legal custody, and should not be construed as such. Rather, there is no constructive purpose to addressing this additional requirement, because it would not change the outcome.