U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28516739

Date: OCT. 19, 2023

Motion on Administrative Appeals 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 naturalized U.S. citizen father under former section 321(a)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432(a)(3). Former section 321(a)(3) of the Act provides, in relevant part that a child born outside of the United States to noncitizen parents becomes a U.S. citizen upon "[t]he naturalization of the parent having legal custody of the child when there has been a legal separation of parents," if the child is under 18 years of age and residing in the United States as a lawful permanent resident.

The Director of the Fresno, California Field Office denied the Form N-600, concluding that the Applicant did not establish, as required, that his parents were legally separated prior to his 18th birthday. We withdrew this determination on appeal, finding the preponderance of the evidence sufficient to show that the parents' legal separation under California law occurred in 1991, when the Applicant was 11 years old. Nevertheless, we dismissed the appeal because the Applicant did not meet his burden of proof to demonstrate that his father satisfied the legal custody requirement before the Applicant turned 18 years of age in [redacted] 1997.

The matter is now before us on a motion to reopen. The Applicant submits additional evidence and requests a favorable decision on his citizenship claim.

Upon review, we will dismiss the motion to reopen.

A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

We incorporate our prior decision here by reference and will only repeat certain facts and findings as necessary to evaluate the new evidence and address the Applicant's statements on motion. As previously discussed, the issue dispositive on the Applicant's citizenship claim is whether his U.S. citizen father had legal custody after the parents separated in 1991, and before the Applicant turned 18 years old in [redacted] 1997. The Applicant testified that after his parents separated in 1991, he returned

to Mexico with his mother and remained there until February 1997, when he came back to the United States. He stated that he worked and resided with his father and his father's friend in [redacted] California from that time until September 1997. The Applicant further stated that although his father enrolled him in a California school, he elected not to pursue education and chose to work instead.

In the jurisdiction of the U.S. Court of Appeals for the Ninth Circuit, where the Applicant's citizenship claim arose, a child may not derive citizenship from only one naturalized parent unless that parent has "sole" legal custody; joint legal custody is not sufficient to meet this requirement. *See U.S. v. Casasola*, 670 F.3d 1023, 1029 (9th Cir. 2012) (holding that the phrase "legal custody" in former section 321(a)(3) of the Act means sole legal custody).

Because neither the parents' divorce decree nor their separation agreement addressed the issue of the Applicant's legal custody,[1] we considered whether his father had "actual uncontested custody" for the purposes of derivative citizenship under former section 321(a)(3) of the Act. As previously explained, the two predominant indicators of actual uncontested custody are (1) the child's physical residence, and (2) consent to custody by the non-custodial parent. *Garcia v. USICE*, 669 F.3d 91, 97 (2d Cir. 2011). We determined that the Applicant did not show he met the first element, as the affidavits he submitted were not sufficient to support his claim that he returned to the United States from Mexico in February 1997 and thereafter lived with his father before turning 18 years old in [redacted] 1997. Specifically, the affiants did not provide details about the Applicant's residence in the United States during this period, and the Applicant did not submit corroborating evidence, such as proof of his claimed 1997 entry, school enrollment, employment, and residential or similar records.

The Applicant now submits previously provided civil documents and affidavits, as well as new evidence, which includes an updated personal statement and affidavits from his father, sister, and his former employer's son; his father's 1996 driver's license and 2012 property tax assessments for certain properties in [redacted] California; a 1997 power of attorney document, a 1995-2013 Social Security earnings statement, correspondence, and photographs. We have reviewed this new evidence, and conclude that it does not establish new facts sufficient to warrant reopening of these proceedings, as the record as a whole remains insufficient to show that the Applicant's father had "actual uncontested custody" of the Applicant during the relevant period before [redacted] 1997.

The Social Security earnings statement reflects, in relevant part, that the Applicant worked in the United States in 1995, 1996, and 1997 for two California-based employers: [redacted] (in 1995 and 1996), and [redacted] (in 1997). This information is consistent with the Applicant's updated declaration that as he got older he "used to come to the United States with [his father] every summer to work," but it does not show that he actually resided with his father in [redacted] California prior to [redacted] 1997, absent additional evidence such as residential or employment-related records listing his address at the time. Moreover, the information in the earnings statement does not appear consistent with the affidavits attesting to the Applicant's and his father's employment with [redacted] in 1997, as it indicates that the Applicant did not begin working for that company until 1999. Thus, while we acknowledge the letter from the company owner's son who states that the Applicant and his father worked at their company in 1997, and that he and his father would sometimes drive the Applicant and his father home to [redacted] after work "in the summer of 1997," we

[1] Applicant was 25 years old by the time his parents divorced in 2005.

cannot give it significant probative weight in establishing the Applicant's residence with his father prior to [redacted] 1997. Given the inconsistent information about the timing of the Applicant's employment with [redacted] as well as the writer's statement that the record of the Applicant's mailing address at the time of his employment with the company has since been lost, the letter is not adequate to support the Applicant's claim of residence with his father in [redacted] California before he turned 18 years of age.

The Applicant references the previously provided affidavit from his father's roommate attesting to the Applicant's residence in his father's home in [redacted] from March until September 1997. We considered this affidavit on appeal and found that it was neither sufficiently detailed nor supported by evidence that the roommate was present in the United States within that timeframe and had personal knowledge of the Applicant's residence with his father. The email correspondence the Applicant submits on motion does not cure this deficiency, as it indicates that his counsel was not successful in contacting the roommate to obtain additional information.

In his updated declaration, the Applicant states that as of 1997 his sisters also resided in [redacted] California, with him, his father, and the roommate and that their room was across from his own.[2] The Applicant's younger sister (born in 1981) states that when the Applicant was 17 years old, a decision was made that he would permanently stay in the United States; the father enrolled the Applicant at [redacted] High School, but the Applicant failed to attend "as he was scared and shy to start over in a different environment." She further states that her father "remembers a probation officer showing up at his doorstep [in March 1997] to address the issue of his minor son not attending school." We cannot afford these statements significant weight. As an initial matter, the sister does not claim that she has personal knowledge of the events she is attesting to and, aside from the Applicant's own statement, the record contains no evidence to indicate that she lived with the Applicant and his father in California in March 1997 or at any time thereafter. Furthermore, the Applicant provides no evidence to corroborate his sister's testimony; rather, according to the email correspondence he submits on motion no record of his 1997 school enrollment was found in the [redacted] School District data system, and a check of [redacted] County, California records did not reveal any information about the claimed March 1997 welfare visit at the father's home due to the Applicant's school nonattendance.

We acknowledge the submission of a [redacted] 1997 general power of attorney document listing the father's address in [redacted] California, as well as the 2012 valuation of the property in [redacted] where the father resided in 1997. However, neither document is probative of the Applicant's residence in [redacted] with his father prior to [redacted] 1997. The power of attorney reflects only that in April 1997 the Applicant's mother, who resided in Mexico at the time, appointed his father to be her agent-in-fact and authorized him to conduct business relating to her interests in the United States; it does not include any provisions for the Applicant's residence or custody. The property assessment, in turn, indicates that as of 2012 the Applicant's parents owned the property in [redacted] California, where the Applicant claims to have resided in 1997.

We also recognize the Applicant's statement that in the summer of 1997 he took a trip with his girlfriend to Universal Studios, and the submission of two photographs from that trip. Although this

[2] We note that none of the other affiants mention the sisters' residence in California during this period.

evidence points to the Applicant's presence in California *after* he turned 18 years old, it does not show that he resided there with his father *before* his 18th birthday.

Thus, although the new evidence indicates that the Applicant worked in the United States during the relevant period, the record as a whole remains insufficient to show that he satisfied the "physical residence" element of the "actual uncontested custody" requirement. Because the Applicant has not shown he meets the first requirement for establishing his father's "actual uncontested custody," we again decline to address whether the "consent" element of "actual uncontested custody" has been satisfied.

In conclusion, the new evidence is not sufficient to establish that the Applicant satisfied the "legal custody" condition in former section 321(a)(3) of the Act to derive citizenship from his father prior to his 18th birthday. Consequently, the Applicant has not provided new facts and evidence sufficient to reopen his citizenship proceedings. His appeal remains dismissed, and his Form N-600 remains denied.

ORDER: The motion to reopen is dismissed.