U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23272549

Date: OCT. 26, 2023

Appeal of New York City, New York Field Office Decision

Form N-600, Application for Certificate of Citizenship

The Applicant seeks a Certificate of Citizenship to reflect that she derived citizenship from her naturalized U.S. citizen father under section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The Director of the New York City, New York Field Office denied the application, concluding that the Applicant did not establish the requisite parent-child relationship with her father because her birth was registered late and her school and medical documents were issued years after she was born.

On appeal, the Applicant submits additional evidence and reasserts eligibility.

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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

To determine whether the Applicant derived U.S. citizenship from her father, 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 Applicant was born in Guinea in [redacted] 2012 to unmarried parents. Her father was also born in Guinea, but naturalized as a U.S. citizen in July 2011, a year before the Applicant's birth. Her mother was a noncitizen when the Applicant was born.[1] In 2015 the Applicant's parents married in Guinea,

[1] We note that pursuant to section 301(g) of the Act, 8 U.S.C. § 1401(g), a person born abroad to one noncitizen and one U.S. citizen parent will be a national and citizen of the United States at birth if the U.S. citizen parent "prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years." As the Applicant does not claim that she acquired U.S. citizenship at birth, and we will not address her eligibility for a Certificate of Citizenship under section 301(g) of the Act at this time.

and her father filed Form I-130, Petition for Alien Relative, on the Applicant's behalf to classify her as his "child" for immigrant visa purposes.[2] U.S. Citizenship and Immigration Services (USCIS) approved the petition, and in August 2017, at the age of five years, the Applicant was admitted to the United States as a lawful permanent resident child of a U.S. citizen (IR-2).

Because the Applicant is currently under the age of 18 years, we consider her 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:
>
> (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.

The term "child," as used in section 320(a) of the Act includes, in relevant part, children who were born to unmarried parents and 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. Section 101(c)(1) of the Act, 8 U.S.C. § 1101(c)(1). The Board of Immigration Appeals held in *Matter of Cross*, 26 I&N Dec. 485, 492 (BIA 2015), that a person born abroad to unmarried parents can be a "child" for purposes of section 320(a) of the Act if they are otherwise eligible and were born in a country or State that had eliminated legal distinctions between children based on the marital status of their parents or had a residence or domicile in such a country or State (including a State within the United States).

Because the Applicant was born abroad, she is presumed to be a noncitizen and bears the burden of establishing her 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 show that her citizenship claim is "probably true," or "more likely than not." *Matter of Chawathe*, 25 I&N Dec. at 376.

[2] The definition of "child" for immigrant visa purposes in section 101(b) of the Act is broader than the definition in section 101(c) of the Act; it includes children who have been legitimated or who have shared a bona fide parent-child relationship with their natural father before reaching 21 years of age, as well as children who were adopted and stepchildren. The record in this case indicates that USCIS and the U.S. Department of State found the Applicant eligible for the immigrant visa classification as the "child" of her U.S. citizen father based on their biological relationship.

II. ANALYSIS

The only disputed issue on appeal is whether the Applicant has met her burden of proof to show that she qualifies as her father's "child" for purposes of derivative citizenship under section 320(a) of the Act.

The Applicant indicated on the instant Form N-600, that she is her father's biological child. The Director determined that the Applicant's previously submitted birth certificate issued in 2015 was not sufficient to establish the claimed relationship because it was "registered more than one year after the date of birth." The Director therefore issued a notice of continuance, asking the Applicant to submit additional evidence, including religious documents, early school records, medical records, and affidavits. In response, the Applicant submitted her 2020 U.S. school records, as well as other evidence to show that she is residing in the United States with her parents. As stated, the Director found this evidence insufficient to show the required parent-child relationship between the Applicant and her father and denied the Form N-600.

On appeal, the Applicant submits additional school, tax, and residential records, as well as a statement from her father and an affidavit from a family friend. The family friend attests that he has known the Applicant's father for the past 18 years, that the father is married to the Applicant's mother, and that the Applicant is their daughter.

We have reviewed the entire record as supplemented on appeal and conclude that the preponderance of the evidence is sufficient to establish the requisite biological parent-child relationship between the Applicant and her father. We will therefore remand the matter for the Director to determine whether the Applicant has been legitimated by her father, and if so, whether she meets the remaining conditions for derivative citizenship under section 320 of the Act, including residence in her father's legal and physical custody in the United States.

To be considered a "child" of a U.S. citizen father within the meaning of section 320(a) of the Act, a child, who like the Applicant was born to unmarried parents, must be legitimated by the father, or must be born in or have residence in a country or State that had eliminated legal distinctions between children based on the marital status of their parents. *See generally* 12 *USCIS Policy Manual* H.2(A), https://www.uscis.gov/policy-manual; *Matter of Cross*, 26 I&N Dec. at. 492. For the legitimation to be recognized in the immigration context, however, there must be a biological relationship between the father and his out-of-wedlock child. *Matter of J-*, 7 I&N Dec. 338, 341 (BIA 1956) (holding that legitimation of an individual by non-biological father does not constitute legitimation for the purpose of immigration laws); *Matter of Bueno-Almonte*, 21 I&N Dec. 1029, 1031 (BIA 1997) (holding that a beneficiary cannot qualify as the legitimated child of the petitioner unless the evidence establishes that the beneficiary is the petitioner's biological child).

In general, absent other evidence, USCIS considers a child's birth certificate recorded by a proper authority as sufficient evidence to determine a child's genetic or gestational relationship to the parent (or parents). *See generally* 12 *USCIS Policy Manual*, *supra*, at H.2(A).

Here, the record contains an auxiliary judgement on the Applicant's birth certificate (*Jugement supplétif tenant lieu d'Acte de naissance*), as well as a transcript of that judgement with the Applicant's

birth registration extract (*Transcription du jugement supplétif d'acte de naissance, Extrait du registre de l'Etat Civil Acte de naissance*), both issued in October 2015, over three years after the Applicant was born. 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. at 1033 (BIA 1997).

Considering the record as a whole, we conclude that the above documents issued by the government of Guinea and the prior determination by both USCIS and the U.S. Department of State of the qualifying parent-child relationship in immigrant visa proceedings are sufficient to establish that the Applicant is "more likely than not" her father's biological child. The auxiliary judgement transcript and birth registration document, issued by the Civil Registrar's Office in [redacted] Guinea reflects that the Applicant was born there in [redacted] 2012, and includes the names of her mother and father. The underlying auxiliary judgement, in turn, shows that in October 2015 the Applicant's father requested a court of the first instance in [redacted] Guinea to rule on the Applicant's birth certificate, and presented testimony from two witnesses and other documents in support of that request. The judgement further reflects that the court found the "merits of the application and the accuracy of information provided at birth" to be as stated, and declared that the Applicant was born in Guinea in [redacted] 2012 and was the daughter of her father and mother. Lastly, the court ordered its judgement to serve as the Applicant's birth certificate and to be transcribed in the margins of the civil status registry of the [redacted] for that year.

According to the U.S. Department of State,[3] if the birth is not registered in Guinea within six months at the hospital, clinic, or area where the child is born, the parents should file a petition with a court at the child's place of birth for permission to register the birth. If the request is approved, the court will issue a judgement (auxiliary judgement), which will then be transcribed by the civil registry office. The parents must bring the court's judgement to the city hall in the child's place of birth so that a civil status officer may enter the data in the civil registry; a late birth certificate issued when a birth was not registered within the legal deadline may only serve as proof of registration of the birth with the Guinean civil registry if it is accompanied by the related auxiliary judgement and the transcript of the registration in the civil registry.[4]

The documents concerning the Applicant's late birth registration appear to meet the above requirements. Although the Applicant's birth was not registered within six months, her parents obtained the appropriate auxiliary judgement from the court in [redacted] Guinea, where the Applicant was born, and a local civil registry office registered her birth and issued her a birth certificate, which identifies her parents. Moreover, USCIS previously found these documents adequate to establish the claimed biological father-child relationship in approving the father's Form I-130, and the U.S. Department of State determined that the Applicant was eligible for an immigrant visa on that basis.

---

[3] *See* U.S. Department of State, Bureau of Consular Affairs, Reciprocity Table, Guinea, https://travel.state.gov/content/travel/en/us-visas/Visa-Reciprocity-and-Civil-Documents-by-Country/Guinea.html (last visited October 20, 2023, and added to the record).

[4] See Canada: Immigration and Refugee Board of Canada, Guinea: Requirements and procedure to obtain a birth certificate extract, including from abroad; information indicated on the document; incorrect or fraudulent birth certificate extracts, https://www.refworld.org/docid/5821dfba4.html (last visited on October 20, 2023, and added to the record).

In view of the above, we conclude that the Applicant has met her burden of proof to demonstrate that she is "more likely than not" her father's biological child. We will therefore return the matter for the Director to determine whether the Applicant qualifies as her father's "legitimated child" for the purposes of derivative citizenship under section 320(a) of the Act and, if so, whether she meets the remaining requirements in that section.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.