U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 13452157

Date: MAR. 3, 2021

Appeal of Harlingen, Texas 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 former section 301(g) of the Act. However, the Director adjudicated the Form N-600 under former section 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432.

The Director of the Harlingen, Texas Field Office denied the application, concluding that the Applicant was not eligible for a Certificate of Citizenship under former section 321 of the Act because neither of his parents became naturalized citizens while the Applicant resided in their custody after having been admitted to the United States as a lawful permanent resident. The Director also found that the Applicant was not eligible for a Certificate of Citizenship under The Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), which took effect on February 27, 2001, because he was over the age of 18 years on its effective date.

The Applicant asserts on appeal that he seeks approval of his Form N-600 under former section 301(g) of the Act based on his 1980 adoption by a U.S. citizen.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

The record reflects that the Applicant was born in Mexico in [redacted] 1972, to foreign national parents. The record does not show that his parents were married. Marriage certificate evidence shows that the Applicant's mother later married a U.S. citizen named P-W-[1] in 1977, and the record also contains a copy of the Applicant's lawful permanent resident (LPR) card showing that he entered the United States as a LPR in July 1979, at the age of seven years. The Applicant's step-father, P-W-, subsequently adopted him in Nebraska on [redacted] 1980, when the Applicant was eight years old. The Applicant's mother did not naturalize, and he is claiming derivative citizenship solely through P-W-.

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.

[1] Name withheld to protect the individual's privacy.

2005). Based on the Applicant's year of birth in 1972 and the year when he turned 18 (1990), the Director determined that his derivative citizenship claim falls under the provisions of former section 321 of the Act.[2]

Former section 321 of the Act provided, in pertinent part:

> (a) A child born outside of the United States of alien parents . . . becomes a citizen of the United States upon fulfillment of the following conditions:
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> > (1) The naturalization of both parents; or
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> > (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 or the naturalization of the mother if the child was born out of wedlock and the paternity of the child has not been established by legitimation; and if
> >
> > (4) Such naturalization takes place while such child is unmarried and under the age of eighteen 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 eighteen years.
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> (b) Subsection (a) of this section shall apply to an adopted child only if the child is residing in the United States at the time of naturalization of such adoptive parent or parents, in the custody of his adoptive parent or parents, pursuant to a lawful admission for permanent residence.

Because the Applicant was born abroad, he is presumed to be a foreign national and bears the burden of establishing his claim to U.S. citizenship by a preponderance of credible evidence. *See Matter of Baires,* 24 I&N Dec. 467, 468 (BIA 2008). The "preponderance of the evidence" standard requires that the record demonstrate the Applicant's claim is "probably true," based on the specific facts of his case. *See Matter of Chawathe,* 25 I&N Dec. 369, 376 (AAO 2010).

[2] The Child Citizenship Act of 2000 (the CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), which took effect on February 27, 2001, amended former sections 320 and 322 of the Act, and repealed former section 321 of the Act. The provisions of the CCA are not retroactive, and the amended provisions apply only to individuals who were not yet 18 years old as of February 27, 2001. Because the Applicant was over the age of 18 in February 2001, he is not eligible for the benefits of the amended Act. *See Matter of Rodriguez-Tejedor,* 23 I&N Dec. 153 (BIA 2001).

II. ANALYSIS

The Applicant meets some of the conditions under former section 321(a) of the Act. Birth certificate and lawful permanent resident evidence shows that the Applicant was authorized to enter the United States as a lawful permanent resident in 1979 and resided here while under the age of 18 years, a partial condition of former section 321(a)(5) of the Act. However, the Applicant does not claim to have derived citizenship under the predicate requirements of former sections 321(a)(1) and (a)(2) of the Act, and the record does not demonstrate eligibility under either section. In addition, the Applicant does not claim eligibility to derive citizenship through his mother pursuant to the out of wedlock provisions contained in former section 321(a)(3) of the Act. In fact, the Applicant does not claim that his mother ever naturalized and the record shows that she was a lawful permanent resident when she died in 2019. The Applicant seeks to establish that he is a U.S. citizen solely through his adoptive father, P-W-.

Here, the Director correctly determined that the Applicant did not satisfy the requirements of former section 321(b) of the Act because he did not meet the condition that required him to have been residing in the United States in the custody of his adoptive parent, pursuant to a lawful admission for permanent residence, at the time of his father's naturalization. In fact, the Applicant's father, P-W-, never naturalized because birth certificate evidence shows that he was born in the United States in 1942 and therefore was a U.S. citizen before he married the Applicant's mother in 1977 and adopted the Applicant 1980. Accordingly, the Applicant cannot show he derived citizenship from P-W- pursuant to former section 321(b) of the Act conditions by showing he was residing in the United States pursuant to a lawful admission for permanent residence at the time of P-W-'s naturalization, as required.

On appeal, the Applicant does not dispute the Director's determination that he has not satisfied former section 321(b) of the Act conditions because P-W- did not naturalize. Instead, he claims that he had sought adjudication of the Form N-600 under former section 301(g) of the Act. However, because the Applicant was born in 1972 and sought to establish that he acquired U.S. citizenship at birth, we must apply the relevant statute for his date of birth, which is former section 301(a)(7) of the Act. [3]

Former section 301(a)(7) of the Act states, in pertinent part that the following individuals shall be nationals and citizens of the United States at birth:

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[3] Former section 301(a)(7) of the Act was re-designated as section 301(g) by the Act of October 10, 1978, Pub. L. No. 95-432, 92 Stat. 1046 (1978). The requirements of former section 301(a)(7) remained the same after the re-designation and until 1986. The Immigration and Nationality Act Amendments of November 14, 1986, Pub. L. No. 99-653, 100 Stat. 3655 (1986), enacted November 14, 1986, amended section 301(g), which now requires an applicant to establish that his or her U.S. citizen parent was physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, rather than for ten years as previously required. Current section 301(g) of the Act is inapplicable here because it applies only to individuals born on or after the 1986 enactment date, whereas the Applicant was born in 1972. *See* Section 8(r) of the Immigration Technical Corrections Act of 1988, Pub. L. No. 100-525, 102 Stat. 2609 (1988).

> a person born outside the geographical limits of the United States . . . of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States . . . for a period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years. . . .

The Applicant claims that because P-W-'s name replaced the name of the Applicant's biological father on the Applicant's birth certificate after P-W- adopted him in 1980, a plain reading of the post-adoption birth certificate now demonstrates that the Applicant was born to a U.S. citizen parent. However, former section 301(a)(7) of the Act applies to persons "born . . . of" a U.S. citizen parent and is not generally construed as applying to adoptive parents. The Applicant contends that the Ninth Circuit Court of Appeals (Ninth Circuit) has found that an individual may demonstrate eligibility for citizenship even without a blood relationship between the child and an adoptive U.S. citizen father. *See Scales v. INS*, 232 F.3d 1159, 1166 (9th Cir. 2005); *see also Solis-Espinoza v. Gonzales*, 401 F.3d 1090, 1094 (9th Cir. 2005). However, in the cases cited by the Applicant, the Ninth Circuit found that the individuals each had a U.S. parent *at the time of birth*, even though the U.S. citizen parent was not a biological parent. In contrast, the Applicant here was born to unmarried parents who were not U.S. citizens, and neither of whom was married to a U.S. citizen at the time of his birth. Moreover, the Applicant resides under the jurisdiction of the Fifth Circuit Court of Appeals, which has found that an individual born abroad to unmarried foreign national parents who is later adopted by a U.S. citizen could not acquire citizenship. *Marquez-Marquez v. Gonzales*, 455 F.3d 548 (5th Cir. 2006). As a result, the Applicant has not shown how former section 301(a)(7) of the Act is applicable to his case. Therefore, the Director's decision to adjudicate the Form N-600 under former section 321 of the Act, and subsequently deny the Form N-600 for failure to meet conditions under former section 321(b) of the Act, was correct and the Form N-600 will remain denied.

III. CONCLUSION

The Applicant has not shown that his U.S. citizen parent, P-W-, naturalized after the Applicant was residing in the United States as a lawful permanent resident. Consequently, the Applicant has not met his burden of proof to establish that he derived U.S. citizenship from his father under former section 321(b) of the Act or former section 301(a)(7) of the Act, and his application for a Certificate of Citizenship remains denied.

ORDER: The appeal is dismissed.