U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 36554070

Date: FEB. 19, 2025

Appeal of Philadelphia, Pennsylvania 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 mother under former section 321 of the Immigration and Nationality Act, 8 U.S.C. § 1432.[1] To derive U.S. citizenship under that section of the Act, a child born abroad to noncitizen parents must satisfy certain conditions before turning 18 years of age.

The Director of the Philadelphia, Pennsylvania Field Office denied the application, concluding that the record did not establish that the Applicant had derived citizenship from his U.S. citizen mother. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

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 in Laos in [redacted] 1979, and both his mother and father are listed on his birth certificate issued in September 2018. The Applicant represented on the instant Form N-600 that his parents were not married when he was born. In January 1980, when the Applicant was 4 years old, he became a lawful permanent resident of the United States. The Applicant's mother naturalized in [redacted] 1993, one week prior to the Applicant's 18th birthday. The Applicant's father naturalized in December 2001, after the Applicant had turned 18.

To determine whether the Applicant derived U.S. citizenship from his mother based on the above facts 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). Here, the last critical event prior to the Applicant's 18th birthday in [redacted] 1997 is his mother's 1991 naturalization. At that time, 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[1] Repealed by Sec. 103(a), title I, Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631 (2000).

(1) The naturalization of both parents; or

(2) The naturalization of the surviving parent if one of the parents is deceased; or

(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 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.

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, 8 U.S.C. §1101(a)(20).

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).

II. ANALYSIS

The Applicant claims to be eligible for derivative citizenship under former section 321(a)(3) of the Act because he was born out of wedlock, his parents never married, and he was not legitimated.

A. Marriage of the Applicant's Parents

On his application for a certificate of citizenship, the Applicant stated that his parents were not married at the time of his birth. However, USCIS records indicated that the Applicant's parents claimed to be married to one another both upon entry to the United States and at the time they applied for citizenship in 1992. The Director issued a request for evidence seeking evidence that the Applicant's parents had legally separated. In response to the request for evidence, the Applicant provided a "Divorce Memorandum" indicating that his parents engaged with village authorities in Laos to mediate family problems. The memorandum goes on to conclude that the mediation was unsuccessful and that the parties were pronounced divorced in 1992. The Applicant claims that since his parents were divorced in 1992, prior to his mother's naturalization and his 18th birthday, he is eligible to derive citizenship under former section 321(a)(3) of the Act.

The Director concluded that the "Divorce Memorandum" did not conform to the legal requirements for a divorce in Laos as described by the U.S. Department of State's reciprocity table. The Director also highlighted that the Applicant's parents both held themselves out to be married and living with one another at the time they applied for citizenship in 1992, including during the benefit interview after the date of the Divorce Memorandum. Based on the evidence in the record, the Director concluded that the Applicant had not established by a preponderance of the evidence that his parents were legally separated within the meaning of former section 321(a)(3) of the Act.

On appeal, the Applicant concedes that the Divorce Memorandum is not sufficient to establish that his parents were legally separated within the meaning of former section 321(a)(3) of the Act. Instead, the Applicant argues that the Director has not identified any document indicating that the Applicant's parents were married. The Applicant further states that at the time of his birth in Laos, the country was going through a transition following years of war and unrest. As a result of this unrest, Lao people often were married without documentation and would hold themselves out to be married even though it was never properly registered with a civil authority. To support this position, the Applicant provided a letter from the Embassy of Laos in the United States. The letter claims that the Applicant was born out of wedlock, though, it does not state what documents or records it reviewed to reach that conclusion or establish that the embassy has the legal authority to make that certification. We acknowledge the Applicant's claim that at the time of his parent's marriage there were difficulties in obtaining the relevant civil documents, however, it is the burden of the Applicant, not USCIS, to provide evidence sufficient to establish his parent's marital status. *Matter of Chawathe*, 25 I&N Dec. at 375-76.

The Applicant also argues that the existence of the Divorce Memorandum is not sufficient to establish that the Applicant's parents were married. The Applicant cites to the Department of State reciprocity table where it states that "a divorce certificate issued by a village or district official that is not a member of the court is not sufficient" evidence of divorce. Bureau of Consular Aff., U.S. Dep't of State, *Visa Reciprocity Table, Laos*, https://travel.state.gov/content/travel/en/us-visas/Visa-Reciprocity-and-Civil-Documents-by-Country/Laos.html. The Department of State reciprocity table also states:

> The Lao Government recognizes marriages between Lao citizens that are not registered but that are reflected in the Household Registration Book that shows a couple to be husband and wife.

Id.

The Applicant has not provided a copy of his family's Household Registration Book to either confirm or deny the existence of his parent's marriage. His argument that the memorandum of divorce is not sufficient to establish that a marriage existed is unpersuasive. While the document is insufficient to establish a legally sufficient divorce through the court system, it is sufficient to establish that village leaders considered the Applicant's parents to be married. At the very least, these documents, combined with the statements of the Applicant's parents on their naturalization applications, create a strong presumption that the Applicant's parents were married prior to his 18th birthday. The Applicant has not provided any affirmative evidence to rebut that presumption either to the Director or on appeal sufficient to meet the preponderance of the evidence standard.

B. Paternity through Legitimation

Even if the Applicant were able to establish that his parents were never married, the Applicant was legitimated by the laws of his residence in Laos, New Jersey, and Pennsylvania. Former section 321(a)(3) of the Act states that a child born out of wedlock may derive citizenship from their U.S. citizen mother if paternity has not been established by legitimation. Legitimation is the act of placing a child born out of wedlock into the same legal position as a child born in wedlock. *See Matter of Moraga*, 23 I&N Dec. 195, 197 (BIA 2001). We consider legitimation based on the domicile of the Applicant and his father prior to obtaining the age of 18. *See* 12 *USCIS Policy Manual* H.2(b), www.uscis.gov/policy-manual.

According to a 2016 Advisory Opinion from the Law Library of Congress, between 1975 and 1990 Laos did not have a formal civil code. The newly formed government of Laos eliminated the distinction between legitimate and illegitimate children with the enactment of the 1990 Family Law which states, "parental and filial rights and obligations arise upon the birth of children." The law goes on to define children as those of "legally married parents or of unmarried parents." *See Laos: Legitimation Law*, (LL File No. 2016-013581, May 2016). Therefore, as of 1990, the Applicant had been legitimated under the laws of Laos whether his parents were married or not.

According to his immigration records, the Applicant originally began living in [redacted], New Jersey upon entry to the United States in 1980. The State of New Jersey eliminated the distinction between legitimate and illegitimate children with the passage of the New Jersey Parentage Act of 1983. The Law states "The parent and child relationship extends equally to every child and to every parent, regardless of the marital status of the parents." N.J. Rev Stat 9:17-40 (1983). At the time the law went into effect, the Applicant was under the age of 18.

Lastly, the Commonwealth of Pennsylvania eliminated the distinction between legitimate and illegitimate children in 1991. The statute provides:

> All Children shall be legitimate irrespective of the marital status of their parents, and, in every case where children are born out of wedlock, they shall enjoy all the rights and privileges as if they had been born during the wedlock of their parents except as otherwise provided in title 20.

23 Pa. Cons. Stat. § 5102(a).

The statute also provides for the determination of paternity:

> For purposes of prescribing benefits to children born out of wedlock by, from and through the father, paternity shall be determined by any one of the following ways:
>
> (1) If the parents of a child born out of wedlock have married each other.
> (2) If, during the lifetime of the child, it is determined by clear and convincing evidence that the father openly holds out the child to be his and either receives the child into his home or provides support for the child…

23 Pa. Cons. Stat. § 5102(b).

The Applicant's father appears on his birth record and shares an address in Pennsylvania during the relevant time period. Therefore, even if the Applicant established that his mother and father never married, he would be unable to establish that he was not legitimated under the laws of either his or his father's domicile. Accordingly, he is not eligible to derive citizenship under former section 321(a)(3) of the Act.

III. CONCLUSION

The Applicant has not established that his parents were legally separated, or that he was born out of wedlock and not legitimated by the laws of his or his father's domicile. Therefore, he has not provided sufficient evidence to establish that he was eligible to derive citizenship under former section 321(a)(3) of the Act. Accordingly, his application will reman denied.

ORDER: The appeal is dismissed.