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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



FILE: [Redacted] Office: Hartford (BOS)

Date:

APR 23 2001

IN RE: Applicant:



APPLICATION: Application for Certificate of Citizenship under § 341(a) of the Immigration and Nationality Act, 8 U.S.C. 1452(a)

IN BEHALF OF APPLICANT:



Public Copy

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Boston, Massachusetts, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on May 3, 1972, in the Dominican Republic. The applicant's father, [REDACTED] was born in the Dominican Republic in October 1951, and became a naturalized U.S. citizen on May 29, 1987. The applicant's mother, [REDACTED] was born in the Dominican Republic in June 1955, and never had a claim to U.S. citizenship. The applicant's parents married each other on February 9, 1980, and they obtained a divorce by mutual consent in the Dominican Republic on September 27, 1989. The applicant was lawfully admitted for permanent residence on September 16, 1983. He seeks a certificate of citizenship under § 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1432.

The district director determined that the applicant had failed to establish that his parent's divorce was valid under Connecticut law; therefore, the parents were still married when the applicant's father naturalized. Since only one parent naturalized, the applicant failed to derive U.S. citizenship, and the district director denied the application accordingly.

On appeal, counsel for the applicant argues that the divorce issued from the Dominican Republic is valid and was recognized by the Superior Court of Connecticut in compliance with § 46b-71 of the Connecticut Statute. Counsel states that the Service does not have jurisdiction to question the determination of the Connecticut Superior Court who recognizes the divorce as valid under the Law of Comity. Counsel states that the Service's decision relies on Litvaitis v. Litvaitis to substantiate the denial. Counsel argues that, although this is a general rule in Connecticut, there are exceptions that the denial fails to mention and that this case would fall under. Moreover, in Litvaitis, there was not a decision of the Superior Court determining the divorce to be valid as there is in this case.

Section 321(a) of the Act in effect prior to its amendment by Pub. L. No. 95-417, Sec. 7, 92 Stat. 918, (Oct. 5, 1978), and its repeal on February 27, 2001, by the Child Citizenship Act of 2000 (CCA), P.L. 106-395, which affects all persons who had not yet reached their 18th birthday on February 27, 2001, provides, in pertinent part, that:

A child born outside of the United States of alien parents, or of an alien parent and a citizen parent who has subsequently lost citizenship of the United States, becomes a citizen of the United States upon fulfillment of the following conditions, and it is immaterial which of the actions occurs last:

- (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 said child is under the age of 16 years; and

(5) Such child is residing in the United States 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 16 years.

(b) Subsection (a) of this section shall not apply to an adopted child.

In Matter of Fuentes, 21 I&N Dec. 893 (BIA 1997), the Board stated that a child's acquisition of citizenship on a derivative basis occurs by operation of law and not by adjudication. The actual determination of derivative citizenship under § 321(a) of the Act may occur long after the fact. The Board discussed the 1978 amendments and indicated that they were curative in nature, as underscored by the legislative history. The Department of Justice informed the Chair of the House Judiciary Committee that currently a person is not eligible to file a petition for naturalization in his own behalf until reaching the age of 18. Thus, there is a 2-year period during which a child is not able to derive citizenship by reason of his parent's naturalization, but is not able to file his own petition for naturalization either...Young people between the ages of 16 and 18 should be allowed to derive citizenship automatically under §§ 320 and 321.

Connecticut law requires that a bona fide domicile by at least one of the parties to a foreign divorce in the country where the divorce took place be firmly established for recognition, whether the divorce is ex parte or by mutual consent. Matter of Biebl, 16 I&N Dec. 604 (BIA 1978); Matter of Revelo, 16 I&N Dec. 685 (BIA 1979); Litvaitis v. Litvaitis, 162 Conn. 540 (1972); and Spaulding v. Spaulding, 171 Conn. 220 (1976); See Matter of Weaver, 16 I&N Dec. 730 (BIA) 1979), (divorce regarded as valid if recognized in place where the parties were then domiciled).

In Matter of Weaver, the Board held that the Connecticut Supreme Court's holding that at least one of the parties to a foreign divorce must have a bona fide domicile in the country of the divorce in order for the divorce to be recognized will not be disturbed, since in Litvaitis v. Litvaitis, the parties to the

divorce were domiciled in Connecticut at the time of the divorce, so Connecticut had an interest in the divorce at the time it was rendered. For purposes of establishing jurisdiction of a court to grant a divorce, 'domicile' is that place where a person has voluntarily fixed his habitation, not for mere temporary or special purpose, but rather with a present intention of making it his home, unless or until something which is uncertain or unexpected happens to induce him to adopt some other permanent home.

The Service respectfully submits that this Connecticut rule must be accorded full faith and credit by the parties affected. By contrast, the Dominican Republic considers a divorce valid if the party obtaining it appears in the Office of Civil Registry within two months for purposes of having the divorce pronounced and registered even though actual pronouncement and registry took place later. See Matter of Jimenez, 18 I&N Dec. 182 (BIA 1981).

The applicant's father resided in the United States from 1978 to the present time, according to information supplied on the application. The record further reflects that the applicant's parents were living together, at least at the same address when the application was filed; that the parents were married on February 9, 1980; that the mother had resided in the United States "from 1983 to present;" and the parents' divorce decree discloses that the mother, not the father, "will reside" in the Dominican Republic during the divorce process. The mother resided in the United States "from 1983."

A federal derivative citizenship claim cannot justifiably rest upon such a slender reed as the conditional motion brought before the state court. 8 C.F.R. 341.2(c) states that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence.

The applicant's state court motion merely sets forth the following prayer:

The plaintiff, respectfully requests the Court to recognize the enclosed divorce decree entered by the Dominican Republic and to enforce it in law and in equity if the circumstances warrant it.

The state court, in return, merely signed the following Order:

The above Motion to Recognize Foreign Divorce Decree, having been filed and heard by the Court, it is hereby granted.

The conditional nature of the motions's "if the circumstances warrant it," is mystifying and, notwithstanding the state judge's granting of the motion (on the attorney's stationery), patently fails to carry the applicant's burden of persuasively proving the unconditional validity of the divorce decree under Connecticut's precedent decisions cited above.



The foreign divorce decree herein still has not been shown to satisfy the requirements of Connecticut law by a preponderance of the evidence. The applicant has not met the burden of proof, and the appeal will be dismissed.

ORDER: The appeal is dismissed.