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U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF T-V-P-

DATE: AUG. 25, 2016

APPEAL OF HIALEAH, FLORIDA FIELD OFFICE DECISION

APPLICATION: FORM N-600, APPLICATION FOR CERTIFICATE OF CITIZENSHIP

The Applicant, a native and citizen of Vietnam, seeks a Certificate of Citizenship. *See* Immigration and Nationality Act (the Act) § 320, 8 U.S.C. § 1431. An individual born outside the United States, who automatically derived U.S. citizenship after birth but before the age of 18, may apply to receive a Certificate of Citizenship. Generally, for an individual claiming automatic U.S. citizenship after birth and who was born after February 27, 1983, the individual must have at least one U.S. citizen parent and be residing in that parent's custody in the United States as a lawful permanent resident before 18 years of age.

The Field Office Director, Hialeah, Florida denied the application. The Director concluded that the Applicant did not respond to a request for evidence of his parents' marriage certificate or divorce and custody order, and that he did not meet his burden of proof in establishing that he derived citizenship through his U.S. citizen father.

The matter is now before us on appeal. In the appeal, the Applicant submits additional evidence and claims that his parents' divorce decree, as well as refugee resettlement and other immigration-related evidence contained in the record, demonstrates that his parents were married and that he was therefore in his father's legal custody.[1]

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

I. LAW

The Applicant is seeking a Certificate of Citizenship indicating that he derived citizenship from his U.S. citizen father. The Applicant was born in Vietnam in [redacted] to foreign national parents. He claims that his parents were married, and he submits a dissolution of marriage decree reflecting that his parents obtained a divorce in the state of Washington in [redacted] 2015. The

[1] The Applicant also claims that one of his siblings applied for, and obtained a Certificate of Citizenship without submitting marriage certificate evidence for his parents; however, each petition filing is a separate proceeding with a separate record. In making a determination of statutory eligibility, we are limited to the information contained in that individual record of proceeding. 8 C.F.R. § 103.2(b).

Applicant was admitted to the United States as a lawful permanent resident in December 1992, and his father became a U.S. citizen through naturalization in November 1997. There is no evidence that the Applicant's mother is a U.S. citizen.

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. 2005). In the present matter, the Applicant was born on and he turned 18 in Accordingly, section 320 of the Act, as amended by the Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631 (CCA), which was in effect on applies to the Applicant's case.

Section 320 of the Act provides, in pertinent part:

> (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 regulation at 8 C.F.R. § 320.1 states the circumstances under which a U.S. citizen parent may be presumed to have legal custody of a child, that is, to have responsibility for and authority over a child:

> (1) For the purpose of the CCA, the Service will presume that a U.S. citizen parent has legal custody of a child, and will recognize that U.S. citizen parent as having lawful authority over the child, absent evidence to the contrary, in the case of:
>
> (i) A biological child who currently resides with both natural parents (who are married to each other, living in marital union, and not separated),
>
> (ii) A biological child who currently resides with a surviving natural parent (if the other parent is deceased), or
>
> (iii) In the case of a biological child born out of wedlock who has been legitimated and currently resides with the natural parent.

(2) In the case of an adopted child, a determination that a U.S. citizen parent has legal custody will be based on the existence of a final adoption decree. In the case of a child of divorced or legally separated parents, the Service will find a U.S. citizen parent to have legal custody of a child, for the purpose of the CCA, where there has been an award of primary care, control, and maintenance of a minor child to a parent by a court of law or other appropriate government entity pursuant to the laws of the state or country of residence. The Service will consider a U.S. citizen parent who has been awarded "joint custody," to have legal custody of a child. There may be other factual circumstances under which the Service will find the U.S. citizen parent to have legal custody for purposes of the CCA.

II. ANALYSIS

The Applicant was born in Vietnam in [redacted] As stated above, to derive U.S. citizenship after birth, an individual born after February 27, 1983, must have at least one U.S. citizen parent and be residing in that parent's legal and physical custody in the United States as a lawful permanent resident before the age of 18. At issue in this case is whether the Applicant resided in the United States in his father's legal custody after his father became a naturalized citizen in 1997, and prior to the Applicant's 18th birthday in [redacted] The Applicant claims that the evidence in the record demonstrates that his parents were married, and that he therefore resided in his father's legal custody. To support his claim, the Applicant submits his parents' divorce decree and documentation relating to his family's refugee status in the United States. The record also contains the Applicant's birth certificate, his father's naturalization certificate, immigration documentation related to the Applicant, and evidence that the Applicant has obtained a U.S. passport.

The entire record has been reviewed and considered in rendering a decision on the appeal. Upon review, we find that the Applicant has demonstrated that he met the legal custody condition contained in section 320(a)(3) of the Act, and that he derived citizenship through his father.

Although the record does not contain the Applicant's parents' marriage certificate, the Applicant submits a divorce decree from the Superior Court in [redacted] Washington, reflecting that his parents were married, and that their marriage was dissolved in 2015, when the Applicant was 30 years old. In addition, the Applicant's father indicated on his naturalization and permanent resident status applications that he married the Applicant's mother in Vietnam in 1977 or 1979. His father's naturalization certificate also reflects that he was married at the time of naturalization in 2007. In addition, the Applicant's Form I-590, Registration for Classification as Refugee Status, approved in 1990, and related Department of State, Bureau for Refugee Programs refugee processing documents, reflect that the Applicant was approved for refugee status and admitted into the United States as part of a family unit with his father, mother and siblings. Upon review of the totality of the evidence, the Applicant has demonstrated by a preponderance of the evidence that his parents were married and did not divorce prior to his 18th birthday.

The regulations provide that legal custody is presumed "in the case of . . . [a] biological child who currently resides with both natural parents (who are married to each other, living in marital union, and not separated." 8 C.F.R. § 320.1(1)(i). Here, the Applicant's refugee and immigration documents indicate that the Applicant was admitted into the United States with his mother and father, and that he lived with his parents in the state of Washington after his admission into the country in 1990. The record does not reflect that the Applicant's parents separated prior to the Applicant's 18th birthday, or that he stopped living with both parents prior to his 18th birthday, in The Applicant therefore established the legal custody condition contained in section 320(a)(3) of the Act.

The Applicant also meets the other requirements for derivative citizenship under section 320(a) of the Act. Certificate of Naturalization evidence contained in the record demonstrates that the Applicant's father became a naturalized U.S. citizen in November 1997, when the Applicant was years old. The Applicant has therefore satisfied the citizen parent condition contained in section 320(a)(1) of the Act. The Applicant has also demonstrated that he was admitted into the United States as a lawful permanent resident in December 1992, when he was years old, as required by the last clause in section 320(a)(3) of the Act.

In addition, the father's physical custody of the Applicant after his admission into the country as a lawful permanent resident was not at issue in the Director's decision, and the record supports a finding that the physical custody condition contained in section 320(a)(3) of the Act has been satisfied. Specifically, the Applicant's Form I-590, Registration for Classification as Refugee Status, as well as Department of State Bureau for Refugee Programs refugee processing documentation, the Applicant's Form I-181, Memorandum of Creation of Record of Lawful Permanent Resident Status, and related Form G-325, Biographic Information forms indicate that the Applicant was admitted into the country with his mother and father when he was years old, and that he continued to live with his parents in the state of Washington after his admission into the country and prior to his 18th birthday.

III. CONCLUSION

In view of the above, the Applicant has sufficiently demonstrated that he resided in the United States in the legal custody of his citizen father, after admission as a lawful permanent resident and prior to his 18th birthday. The Applicant has therefore established that he derived U.S. citizenship from his father pursuant to section 320 of the Act.

It is the Applicant's burden to establish the claimed citizenship by a preponderance of the evidence. Section 341(a) of the Act, 8 U.S.C. § 1452(a); 8 C.F.R. § 341.2(c). The Applicant has met that burden. Accordingly, we sustain the appeal.

ORDER: The appeal is sustained.

Cite as *Matter of T-V-P-*, ID# 17241 (AAO Aug. 25, 2016)