U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF G-A-P-

DATE: FEB. 4, 2016

APPEAL OF OAKLAND PARK FIELD OFFICE DECISION

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

The Applicant, a native of Venezuela, seeks a Certificate of Citizenship. *See* Immigration and Nationality Act (the Act) § 320, 8 U.S.C. § 1431. The Director, Oakland Park, Florida Field Office, denied the application. The matter is now before us on appeal. The appeal will be sustained.

The Applicant was born to married Venezuelan citizen parents in Venezuela on Her parents divorced on 2003, when the Applicant was years old. The Applicant's mother is not a U.S. citizen. Her father, however, became a naturalized U.S. citizen on May 25, 2012, when the Applicant was years old. The Applicant was admitted into the United States as a lawful permanent resident on August 28, 2013, when she was

The Applicant seeks a certificate of citizenship demonstrating that she acquired U.S. citizenship through her father pursuant to § 320 of the Act, as amended by the Child Citizenship Act of 2000 (the CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000). In a decision dated April 20, 2015, the Director denied the Applicant's Form N-600, Application for Certificate of Citizenship, on the ground that she did not establish that she resided in her U.S. citizen father's legal custody, as required under § 320(a)(3) of the Act. On appeal, the Applicant indicates that divorce decree evidence establishes that her father and mother were awarded joint legal custody over her, and that she therefore meets the legal custody requirements contained in § 320 of the Act.

The Applicant also cites to one of our non-precedent decisions to support the assertion that she resided in her father's legal custody, as required under § 320(a)(3) of the Act. We note that while 8 C.F.R. § 103.3(c) provides that our precedent decisions are binding on all U.S. Citizenship and Immigration Services (USCIS) employees in the administration of the Act, unpublished decisions are not similarly binding. We note further that each application is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.2. In making a determination of statutory eligibility, we are limited to the information contained in the individual record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii).

Because the Applicant was born abroad, she is presumed to be an alien and bears the burden of establishing her claim to U.S. citizenship by a preponderance of credible evidence. *See Matter of Baires-Larios*, 24 I&N Dec. 467, 468 (BIA 2008). The "preponderance of the evidence" standard requires that the record demonstrate that the Applicant's claim is "probably true," based on the

specific facts of each case. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (citing *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (BIA 1989)).

The applicable law for derivation of citizenship is "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 under 18 years of age on the effective date of the CCA, February 27, 2001. Thus, § 320 of the Act, as amended by the CCA, is applicable to her case.

Section 320(a) of the Act provides that:

> 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.

Evidence in the record reflects that the Applicant's mother is not a U.S. citizen; however, her father became a naturalized U.S. citizen on May 25, 2012, when the Applicant was years old. The Applicant has therefore satisfied the requirement contained in section 320(a)(1) of the Act. The record also reflects that the Applicant was admitted into the United States as a lawful permanent resident on August 28, 2013, when she was In addition, affidavit, airline ticket, income tax return, school transcript, and bank evidence reflects that the Applicant lived with her father at his address in Florida from the time that she was admitted to the United States in July 2012 until she turned 18. The Applicant has therefore demonstrated that she meets the physical custody and lawful permanent residence requirements contained in section 320(a)(3) of the Act.

The issue in this case is whether the evidence demonstrates that the Applicant resided in her U.S. citizen father's legal custody when she became a lawful permanent resident on August 28, 2013, the last event required for her derivation of citizenship under section 320 of the Act.

The regulation provides that legal custody "refers to the responsibility for and authority over a child." 8 C.F.R. § 320.1. The regulation at 8 C.F.R. § 320.1(2) provides further that:

> In the case of a child of divorced . . . 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.

The record contains a copy of the Applicant's parents' divorce decree reflecting that they divorced in [redacted] Venezuela on [redacted] 2003. The divorce decree states that "guard and custody" is awarded to the Applicant's mother, and that both the Applicant's mother and father are awarded "patria potestas" over the Applicant. A July 12, 2012, document signed by the Applicant's mother reflects that she authorized the Applicant to live with her father, "with whom she [the Applicant's mother] shares the Patria Potestas."

Similar to the definition set forth at 8 C.F.R. § 320.1, providing that the term "legal custody" refers to the responsibility for and authority over a child, the term "patria potestas" refers to the "responsibility to support and maintain family members." *See* Black's Law Dictionary (9th Ed. 2009). The Seventh Circuit Court of Appeals addressed the meaning of "patria potestas" under Venezuelan law in *Altamiranda Vale v. Avila*, 538 F.3d 581, 587 (7th Cir. 2008), stating "when the parent who does not receive physical custody is given the rights and duties of 'patria potestas,' he has custody rights within the meaning of the [Hague Convention on the Civil Aspects of International Child Abduction, T.I.A.S. No. 11,670, 1343 U.N.T.S. 89 (Oct. 25, 1980) (Hague Convention.)]" Like "legal custody," article 5(a) of the Hague Convention provides, in pertinent part, that for purposes of the Convention, the term "rights of custody" shall include rights relating to the care of the person of the child."[1] The Seventh Circuit Court of Appeals clarified further in *Altamiranda Vale* that, "[b]y virtue of the doctrine of 'patria potestas' . . . the father, had rights relating to the care of the person of the child." *Altamiranda Vale v. Avila* at 586 (reaffirmed in a later Seventh Circuit case, *Garcia v. Pinelo*, 808 F.3d 1158 (7th Cir. 2015). We therefore find that an award of patria potestas in this instance is equivalent to a grant of legal custody under the CCA.

The Applicant's parent's divorce decree demonstrates that the Applicant's mother was awarded physical custody over the Applicant, and that both of her parents were awarded "patria potestas," or legal custody over the Applicant. The Applicant's mother's July 2012 letter authorizing the Applicant to live with her father in Florida did not change the parents' legal custody rights, and the record contains no evidence indicating that the Applicant's parents' joint legal custody order was at any time amended by a court. Accordingly, the Applicant has shown that she was in her father's legal custody when she became a lawful permanent resident on August 28, 2013, the last requirement for her derivation of citizenship under section 320(a) of the Act.

Strict compliance with statutory prerequisites is required to acquire citizenship. *See Fedorenko v. U.S.*, 449 U.S. 490, 506 (1981). It is the Applicant's burden to establish the claimed citizenship by a

[1] Under Article 5(a) of The Hague Convention the term "rights of custody" also includes the right to determine the child's place of residence.

preponderance of the evidence. Section 341(a) of the Act, 8 U.S.C. § 1452(a); 8 C.F.R § 341.2(c). Here, the Applicant's burden has been met.

ORDER: The appeal is sustained.

Cite as *Matter of G-A-P-*, ID# 15079 (AAO Feb. 4, 2016)