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U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF H-A-C-M-

DATE: FEB. 9, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Applicant, a native and citizen of El Salvador, seeks a Certificate of Citizenship. *See* Immigration and Nationality Act (the Act) § 320, 8 U.S.C. § 1431. The Director, San Francisco Field Office, denied the application. We dismissed the Applicant's appeal. The matter is now before us on a motion to reopen and a motion to reconsider. The motions will be denied.

The Applicant currently resides in El Salvador. The record reflects that the Applicant was born in El Salvador on 1980, to married parents. The Applicant's biological father, now deceased, was not a U.S. citizen. The Applicant's mother married the Applicant's U.S. citizen step-father on 1983, in California. The Applicant's step-father did not adopt him. The Applicant was admitted to the United States as a lawful permanent resident on October 18, 1985. The Applicant's mother became a U.S. citizen through naturalization on July 7, 1998, when the Applicant was over the age of 18. The Applicant claims that he derived U.S. citizenship through his U.S. citizen step-father pursuant to section 320 of the Act.

On 2004, the Applicant was removed from the United States to El Salvador. He re-entered the United States on an unknown date and was removed to El Salvador again on 2011. On January 26, 2012, the Applicant filed a Form N-600, Application for Certificate of Citizenship, representing that he resided in California. The Director denied the application on June 20, 2012, finding that the Applicant was not eligible for derivative citizenship under section 320 of the Act through his step-father, because section 320 of the Act does not provide for derivative citizenship through a step-parent. Further, the Director determined that the Applicant did not derive citizenship through his mother pursuant to former section 321 of the Act because his mother naturalized when he was over the age of 18.

On September 4, 2014, we dismissed the Applicant's appeal finding that because the Applicant was outside of the United States at the time he filed his Form N-600 and thereafter, U.S. Citizenship and Immigration Services (USCIS) did not have jurisdiction to consider his citizenship claim.

On motion, the Applicant asserts that we erred by dismissing his appeal on a ground which was not previously raised in the Director's decision without addressing the merits of his citizenship claim. Further, the Applicant claims that we improperly analyzed the evidence pertaining to his physical presence in the United States at the time the Form N-600 was filed. Finally, the Applicant avers that

he made a good faith claim of citizenship prior to his deportation, while in custody of the Immigration and Customs Enforcement (ICE), and that for this reason our dismissal of the Applicant's appeal on jurisdictional ground was improper. The Applicant re-submits the arguments he presented on appeal for consideration on motion.

The Applicant asserts that we incorrectly dismissed his appeal because the issue of jurisdiction over his citizenship claim was not previously raised in the Director's decision. In support of this assertion, the Applicant references the information on the USCIS website which states that we conduct administrative review of appeals to ensure consistency and accuracy in the interpretation of immigration law and policy. The Applicant interprets this to mean that when adjudicating an appeal we have no authority to raise a new issue, which was not propounded by USCIS in an adverse decision. This interpretation is not correct. We exercise *de novo* review of all issues involving the application of law, policy, and discretion to the facts of a case. *See* 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v. U.S. Dep't of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). Federal courts have long recognized our *de novo* authority. *See, e.g., Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). This means that we look at the record anew and that we are limited to findings made in the initial USCIS decision. Our decision may address new issues that were not raised or resolved in the prior decision.[1] Accordingly, we find the Applicant's argument to be unpersuasive.

The Applicant further asserts that we improperly considered evidence pertaining to his physical presence in the United States at the time his Form N-600 was filed. The Applicant claims that he was still in ICE custody on [redacted], 2011, when he signed Form G-28, Notice of Entry or Appearance as Attorney or Accredited Representative, submitted with the Form N-600. Counsel for the Applicant suggests that the information about the Applicant's removal from the United States on [redacted], 2011, is inconclusive as it was not included in the Director's decision. Counsel states further that the Executive Office for Immigration Review (EOIR) case status information contradicts our determination that the Applicant was removed from the United States on [redacted] 2011. However, counsel does not assert that the [redacted], 2011, date is incorrect, nor does counsel provide a different date for the Applicant's removal. In addition, counsel claims that the information about the Applicant's removal in the USCIS database was not disclosed to the Applicant or counsel. Counsel does not explain how this claimed non-disclosure relates to or affects the outcome of the Applicant's case. Instead, counsel cites to the U.S. Supreme Court's decision in *Fong Haw Tan v. Phelan*, 333 U.S. 6 (1948) for the general proposition that deportation has been historically viewed as having harsh consequences.

Regardless, the record reflects the Applicant was aware of the date he was removed from the United States. As explained above, we conduct a *de novo* review on appeal, and we are not limited to

[1] See Administrative Appeals Office Practice Manual, Chapter 3.4, *De Novo* Standard of Review, available at http://www.uscis.gov/about-us/directorates-and-program-offices/administrative-appeals-office-aao/practice-manual/chapter-3-appeals.

findings made in the Director's decision. The Applicant's immigration file contains Form I-205, Warrant of Removal/Deportation, which bears the Applicant's fingerprint and signature, and the signature of the ICE officer who witnessed the removal. This evidence conclusively establishes that the Applicant was removed from the United States on [redacted] 2011, at [redacted] Arizona. The Applicant's Form N-600 was filed with USCIS on January 26, 2012, more than one month after he was removed. The Form G-28, which the Applicant signed on August 22, 2014, and submitted on appeal, shows that he resided in El Salvador. Similarly, on the instant Form I-290B, Notice of Appeal or Motion, and the accompanying Form G-28, the Applicant represented that he currently resides in El Salvador. Accordingly, we conclude that the Applicant has not established that he was physically present in the United States at the time his Form N-600 was filed with USCIS on January 26, 2012, at any time thereafter, or that he is currently in the United States.

The Applicant contends that USCIS had jurisdiction to adjudicate the Form N-600 because he was still in ICE custody when he first raised his derivative citizenship claim. The record contains a copy of a Form N-600, which was signed by the Applicant's counsel on December 13, 2011. Although this indicates that the Applicant may have raised a claim to citizenship while in removal proceedings, his Form N-600 was not properly filed with USCIS until January 26, 2012, after he had been removed from the United States.[2]

As discussed in our decision on appeal, the Secretary of State has jurisdiction over claims of U.S. citizenship made by individuals who are abroad, and the Secretary of Homeland Security has jurisdiction over the administration and enforcement of the Act within the United States. *See* sections 103(a)(1) and 104(a)(3) of the Act, 8 U.S.C. § 1103(a)(1) and 8 U.S.C. § 1104(a)(3). As the Applicant resides abroad, his citizenship claim falls within the jurisdiction of the Secretary of State, and not USCIS. Because we have no jurisdiction to adjudicate the Applicant's Form N-600, we find that discussion of the merits of the Applicant's derivative citizenship claim would serve no legitimate purpose.

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). Here, that burden has not been met.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of H-A-C-M-*, ID# 15080 (AAO Feb. 9, 2016)

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[2] The regulations at 8 C.F.R. § 103.2(a)(1) provide that every benefit request submitted to DHS (Department of Homeland Security) must be executed and filed in accordance with the form instructions with appropriate fee(s). The Form N-600 instructions at the time (Rev. 01/18/2011) provided that any Form N-600 that was not signed or accompanied by the correct fee would be rejected.