U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF E-V-

DATE: JAN. 14, 2016

APPEAL OF NEW YORK DISTRICT OFFICE DECISION

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

The Applicant, a native and citizen of the Dominican Republic, seeks a certificate of citizenship. Immigration and Nationality Act (the Act) § 320, 8 U.S.C. § 1431. The Director, New York District Office, denied the application. The matter is now before us on appeal. The appeal is dismissed.

The Applicant was born in the Dominican Republic on [redacted] The Applicant's parents were married on [redacted] 1992. The Applicant was admitted to the United States as a lawful permanent resident on February 11, 2007, and resided with his father. The Applicant's father's naturalization took place on July 15, 2011. The Applicant seeks a certificate of citizenship pursuant to section 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 January 31, 2014, decision, the Director determined that the Applicant did not derive U.S. citizenship because he did not establish that he was in the legal custody of his U.S. citizen father. On appeal, the Applicant submits a document titled "Act Granting Custody and Guardianship of Minors."

We review these proceedings *de novo*. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Because the Applicant was born abroad, he is presumed to be an alien and bears the burden of establishing his 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 (Comm'r. 1989)).

The applicable law for transmitting citizenship to a child born abroad when one parent is a U.S. citizen is the statute that was in effect at the time of the child's birth. *See Chau v. Immigration and Naturalization Service,* 247 F.3d 1026, 1028 n.3 (9th Cir. 2001) (internal citation omitted). The Applicant was under 18 years of age on the effective date of the CCA, [redacted] Thus, section 320 of the Act, as amended by the CCA, is applicable in his 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 Applicant turned 18 years of age on [redacted] At issue in this case is whether the Applicant can establish that he was residing in the United States in the legal custody of his U.S. citizen father prior to his 18th birthday.

The record contains a divorce judgment for the Applicant's father and mother, dated [redacted] 1998, indicating that the divorce, based upon stipulations agreed to by both parties before a notary public, was admitted by the court. The judgment further states that their two children, including the Applicant, would be under the care of their mother.

The record also contains a document executed by the Applicant's mother before a public notary in the Dominican Republic, dated April 19, 2012, stating that the Applicant's mother granted custody and guardianship of the Applicant to his father, so that everything could be done for the processing of the Applicant's U.S. citizenship.

Legal custody vests "by virtue of either a natural right or a court decree". *See Matter of Harris*, 15 I&N Dec. 39 (BIA 1970). Where the parents were never married, the mother is presumed to retain legal custody by natural right. *Id.* at 41. Where, as here, the Applicant's parents were married, the Applicant must present a copy of a court document, such as a divorce decree, legal separation, or custody order, indicating which parent was awarded custody upon their separation. *See* 8 C.F.R. § 320.1 (providing that "[i]n 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 record contains a divorce judgment awarding custody of the Applicant to his mother. There is no evidence that the grant of legal custody to the Applicant's mother upon her divorce from the Applicant's father has been judicially amended.

The record also does not establish that an agreement executed before a public notary is sufficient to modify a judicial custody determination. We note that when foreign law is required to establish eligibility for a benefit, the application of the foreign law is a question of fact which must be proved by the applicant. *See, e.g., Matter of Kodwo,* 24 I&N Dec. 479 (BIA 2008).

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 appeal is dismissed.

Cite as *Matter of E-V-*, ID# 14404 (AAO Jan. 14, 2016)