U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF Y-P-D-L-P-

DATE: JAN. 28, 2016

APPEAL OF YAKIMA FIELD OFFICE DECISION

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

The Applicant, a native of Mexico, seeks a Certificate of Citizenship. *See* Immigration and Nationality Act (the Act) § 321, 8 U.S.C. § 1432 (Repealed by Sec. 103(a), title I, Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631 (2000)). The Director, Yakima, Washington Field Office, denied the application. The matter is now before us on appeal. The appeal will be sustained.

The Applicant was born to unmarried Mexican citizen parents in Mexico on The Applicant's birth certificate was registered in the State of on when the Applicant was four months old. The birth certificate listed both the Applicant's father and mother, but only the Applicant's mother, and not the father, appeared before the registry official for the birth certificate. On February 22, 1993, the Applicant was admitted to the United States as a lawful permanent resident based on the approval of a Form I-130, Petition for Alien Relative, filed by her mother. The Applicant's mother became a U.S. citizen through naturalization on November 19, 1998, when the Applicant was years old. The Applicant's parents never married and her father never became a citizen of the United States. The Applicant's father passed away on , 2011, when the Applicant was years old.

The Applicant seeks a certificate of citizenship indicating that she derived U.S. citizenship through her mother under former section 321(a) of the Act. In a decision dated, January 26, 2015, the Director determined that the Applicant did not establish eligibility for derivative citizenship because her father's name was listed on her birth certificate, and her paternity was therefore established by legitimation under the law in Mexico. On appeal, the Applicant asserts that only her mother registered her birth, and that her father did not acknowledge paternity or legitimate her under Mexican or United States law. She asserts that she therefore derived U.S. citizenship when her mother became a naturalized U.S. citizen in 1998.

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)).

To determine whether the Applicant derived citizenship from her mother, we apply "the law in effect when [she] fulfilled the last requirement for derivative citizenship." *Ashton v. Gonzales,* 431 F.3d 95, 97 (2d Cir. 2005) (citing *Matter of Rodriguez–Tejedor,* 23 I&N Dec. 153, 163 (BIA 2001)). The Applicant does not dispute that the relevant citizenship law in effect when she fulfilled the last requirement, that is, when the Applicant's mother became a naturalized U.S. citizen on November 19, 1998, was former section 321(a) of the Act.[1] Former section 321(a) of the Act provided, 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:
>
> (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 18 years; and
>
> (5) Such child is residing in the United States pursuant to a lawful admission for permanent residence at the time of the naturalization of the parent last naturalized under clause (2) or (3) of this subsection, or thereafter begins to reside permanently in the United States while under the age of 18 years.

(Emphasis added).

In this case, evidence in the record reflects that the Applicant was born out of wedlock to Mexican citizen parents. Evidence that the Applicant was admitted into the United States as a lawful

[1] The Child Citizenship Act of 2000 (the CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), which took effect on February 27, 2001, amended sections 320 and 322 of the Act, and repealed former section 321 of the Act. The provisions of the CCA are not retroactive, and the amended provisions of section 320 and 322 of the Act apply only to persons who were not yet 18 years old as of February 27, 2001. The Applicant's 18th birthday was on [redacted] Because the Applicant was over the age of 18 on February 27, 2001, her application is adjudicated under former section 321 of the Act. *See Rodriguez-Tejedor,* 23 I&N Dec. 153.

permanent resident on February 22, 1993, when she was [redacted] years old, is contained in the record. The record also reflects that the Applicant resided in the United States with her mother from February 1993 until she turned 18. In addition, the Applicant was under the age of 18 when her mother became a naturalized U.S. citizen on November 19, 1998. Accordingly, the Applicant has met the requirements set forth in subsections 321(a)(4) and (a)(5) of the former Act.

To derive U.S. citizenship, the Applicant must also meet the requirements of either subsection (1), (2), or (3) of former section 321(a) of the Act. The Applicant does not claim that she is eligible under subsections (1) or (2), and the record reflects that she is not. In addition, because the Applicant's parents were never married, there could not have been a legal separation between them, and thus she cannot derive U.S. citizenship under the first clause of former section 321(a)(3) of the Act. The issue in this case is whether the Applicant qualifies under the second clause of that provision, which requires that paternity was not established by legitimation prior to the Applicant's 18th birthday.

The Board of Immigration Appeals (the Board) has defined "legitimation" as "the act of putting a child born out of wedlock in the same legal position as a child born in wedlock." *In re Cabrera,* 21 I&N Dec. 589, 591 (BIA 1996); *see also Lau v. Kiley,* 563 F.2d 543, 550 (2d Cir.1977). "Where less than equality of status results, an act of legitimation is not deemed to have occurred." *Cabrera,* 21 I&N Dec. at 591.

The U.S. Court of Appeals for the Second Circuit explained that: "[l]egitimacy is a legal concept. The law makes a child legitimate or illegitimate." *Lau,* 563 F.2d at 548. The Second Circuit explained further that:

> There must be some purpose in the distinction the law makes between legitimate children and illegitimate children. The distinction must have some effect and must have been designed to distinguish between the two categories in order that they have different rights or obligations. Whether a child is born in wedlock or out of wedlock may be sociologically, religiously, or psychologically significant, but there is no legal significance unless the law makes one.

Id. Thus, the Applicant's paternity was established by legitimation if the law in [redacted] Mexico placed her in the same legal position as a child born in wedlock. The Applicant asserts that her paternity has not been established by legitimation under the law in her place of birth, [redacted] Mexico.

A 2010, Library of Congress (LOC) report discusses laws on legitimation and distinctions between children born in and out of wedlock in the State of [redacted], Mexico. *See* LOC Report No. 2010-004743; *see also*, LOC Report No. 2004-416 (stating that "the provisions of the Civil Code currently in effect in [redacted] pertaining to the equality of all children are applicable also to those children who were born before the enactment of said Code.") The 2010 LOC report indicates that the [redacted] Civil Code "does not appear to include rules concerning legitimation of children born out

of wedlock." The report indicates further that article 497 of the [redacted] Civil Code provides that the law does not establish any distinction in the rights derived from filiation. *Id.* Nevertheless, children born out of wedlock in the State of [redacted] must first establish filiation before they can exercise certain rights under the law. According to the LOC report:

> Children born out of wedlock need to establish filiation in order to have their rights implemented. Maternity is proved by the mere fact of birth, which may be demonstrated with any kind of evidence allowed by law. With respect to the father, filiation is established by voluntary acknowledgment or by a judgment declaring paternity.

Id. Citing to [redacted] Civil Code articles 520, 521, 527, and 538, the LOC report states that:

> Acknowledgement of a child must be done in one of the following ways:
>
> I. In the birth certificate before the Civil Registry official;
>
> II. In an acknowledgement certificate before the Civil Registry official;
>
> III. In the marriage certificate of the parents, in which case they have the duty to make the acknowledgement;
>
> IV. In a notarized document;
>
> V. In a will;
>
> VI. By judicial confession.
>
> A child acknowledged by the father, by the mother, or by both has the following rights:
>
> I. To take the last name of the acknowledging parent;
>
> II. To get support from the acknowledging parent;
>
> III. To get an inheritance share as provided by law for cases of intestate succession or to get support as provided by law if the acknowledged child is not chosen as a testamentary heir in case of a testate succession;
>
> IV. To exercise the rights granted by the [redacted] Civil Code to posthumous children.

The record in this case includes the Applicant's birth certificate, registered in the State of Mexico on , when the Applicant was four months old. The birth certificate lists both the Applicant's mother's and father's names; however, the birth certificate is requested only by the Applicant's mother. The birth certificate does not reflect that the Applicant's father registered the Applicant's birth or that he voluntarily acknowledged his paternity before a Civil Registry official. The record also contains no evidence reflecting that the Applicant's father acknowledged his paternity over the Applicant in any other manner set forth in the Civil Code. The Applicant's paternity has therefore not been established by legitimation.[2] Accordingly, she meets the requirement set forth in the second clause of former section 321(a)(3) of the Act, and she has fulfilled the requirements for derivative citizenship under former section 321 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 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 Y-P-D-L-P-*, ID# 13421 (AAO Jan. 28, 2016)

[2] Paternity was also not established by legitimation under Oregon State law, where the Applicant resided after 1993. Section 109.070 of the Oregon Revised Statutes, in effect in 1998, and as set forth in the Oregon Statutes Annotated, in effect prior to the Applicant's 18th birthday, reflects that the paternity may be established by the marriage of the parents after the child's birth; through filiation proceedings; by voluntary acknowledgement of paternity before the State Registrar; or by establishment or declaration under another provision of law. The record contains no evidence that the Applicant's father established his paternity over the Applicant in any manner set forth under Oregon State law.