U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF K-A-Z-

DATE: JAN. 29, 2016

APPEAL OF BALTIMORE FIELD OFFICE DECISION

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

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

The record reflects that the Applicant was born in Ethiopia on , to married, non-U.S. citizen parents. The Applicant's mother was granted asylum in the United States in December 1995. The Applicant was admitted to the United States as a derivative asylee on September 30, 1997, at the age of The Applicant's mother became a naturalized U.S. citizen on November 20, 2002, when the Applicant was years of age. On December 1, 1999, the Applicant filed Form I-485, Application to Register Permanent Residence or Adjust Status. The Applicant's Form I-485 was approved, and the Applicant was ostensibly granted Lawful Permanent Resident status on July 16, 2003, approximately eight months after his mother became a naturalized U.S. citizen. The Applicant seeks a certificate of citizenship indicating that he derived U.S. citizenship from his mother pursuant to section 320 of the Act, 8 U.S.C. § 1431.

In a September 8, 2015, decision, the Director determined that the Applicant did not establish that he was lawfully a legal permanent resident of the United States, as required by section 320(a)(3) of the Act, 8 U.S.C. § 1431(a)(3), because his mother became a naturalized U.S. citizen prior to the Applicant's adjustment of status. The Form N-600, Application for Certificate of Citizenship, was denied accordingly.

On appeal, the Applicant contends that the Director made an erroneous conclusion of law in finding that he adjusted his status unlawfully as he met all the requirements for adjustment under 8 C.F.R. § 209.2. The Applicant also contends that because his application for lawful permanent resident status was approved, U.S. Citizenship and Immigration Services (USCIS) should be estopped from finding that he adjusted unlawfully particularly since USCIS took more than three years to approve the adjustment application.

We conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

Because the Applicant was born abroad, he is presumed to be a foreign national 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 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). Section 320 of the Act, 8 U.S.C. § 1431, as amended by the Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631 (CCA), applies to this appeal because the Applicant was not yet 18 years old as of the February 27, 2001, effective date of the CCA. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153, 156 (BIA 2001) (en banc).

Section 320(a) of the Act, 8 U.S.C. § 1431(a), provides:

> 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 record indicates that the Applicant was admitted to the United States as a derivative asylee on September 1, 1999, based on the grant of asylum status to his mother. The record further indicates that the Applicant's mother became a naturalized U.S. citizen on March 27, 2007, prior to the Applicant's 18th birthday. Although the record indicates that the Applicant was granted permanent resident status on July 16, 2003, also prior to his 18th birthday, the issue in this particular case is whether the Applicant was legally qualified for permanent residence at the time of his adjustment of status.

The Applicant's mother was granted asylum in the United States on December 8, 1995, in accordance with section 101(a)(42) of the Act, which states:

> any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution

> on account of race, religion, nationality, membership in a particular social group, or political opinion,

The Applicant claims that he was eligible to adjust his status to lawful permanent residence as a derivative asylee in accordance with 8 C.F.R. § 209.2, which provides for adjustment of status of an alien granted asylum.

8 C.F.R. § 209.2 states, in pertinent part:

> The provisions of this section shall be the sole and exclusive procedure for adjustment of status by an asylee admitted under section 208 of the Act whose application is based on his or her asylee status.
>
> > (a)*Eligibility.* ...the status of any alien who has been granted asylum in the United States may be adjusted by USCIS to that of an alien lawfully admitted for permanent residence, provided the alien:
> >
> > > (i) Applies for such adjustment;
> > >
> > > (ii) Has been physically present in the United States for at least one year after having been granted asylum;
> > >
> > > (iii) Continues to be a refugee within the meaning of section 101(a)(42) of the Act, or is the spouse or child of a refugee;
> > >
> > > (iv) Has not been firmly resettled in any foreign country; and
> > >
> > > (v) Is admissible to the United States as an immigrant under the Act at the time of examination for adjustment ....

According to 8 C.F.R. § 209.2(iii), an asylee is eligible to adjust status if the asylee continues to be a refugee within the meaning of section 101(a)(42) of the Act, and a derivative asylee is eligible to adjust if the derivative asylee continues to be the spouse or child of a refugee. In this particular case, the mother of the Applicant became a naturalized U.S. citizen on November 20, 2002, and thus was no longer a refugee within the meaning of section 101(a)(42) of the Act as a person who is outside any country of such person's nationality. As the Applicant's mother was no longer a refugee upon naturalization, the Applicant was no longer the child of a refugee after his mother's naturalization, and thus was no longer eligible to adjust his status under 8 C.F.R. § 209.2 following his mother's naturalization.

As noted in the USCIS Policy Manual:

> A principal asylee who has naturalized no longer meets the definition of a refugee. See INA 101(a)(42). Therefore, once the principal has naturalized, a spouse or child is no longer eligible to adjust status as a derivative asylee because they no longer qualify as the spouse or child of a refugee.

See, USCIS Policy Manual, Volume 7: Adjustment of Status, Part M – Asylee Adjustment, *available at* http://www.uscis.gov/policymanual/HTML/PolicyManual-Volume7.html.

As such, we concur with the Director that the Applicant did not establish that he is residing in the United States pursuant to a lawful admission for permanent residence as required under section 320(a)(3) of the Act. Therefore, the Applicant did not demonstrate that he derived U.S. citizenship from his mother pursuant to section 320 of the Act.

We recognize that the Applicant was ostensibly granted Lawful Permanent Resident status on July 16, 2003, and that the statute setting out the power to revoke lawful permanent resident status specifies that the deadline for such an action is five years from the date of the adjustment of status. Section 246(a) of the Act states, in pertinent part:

> If, at any time within five years after the status of a person has been otherwise adjusted ... to that of an alien lawfully admitted for permanent residence, it shall appear to the satisfaction of the Attorney General that the person was not in fact eligible for such adjustment of status, the Attorney General shall rescind the action taken granting an adjustment of status to such person and cancelling removal in the case of such person if that occurred and the person shall thereupon be subject to all provisions of this chapter to the same extent as if the adjustment of status had not been made. Nothing in this subsection shall require the Attorney General to rescind the alien's status prior to commencement of procedures to remove the alien under section 1229a of this title, and an order of removal issued by an immigration judge shall be sufficient to rescind the alien's status.

In this particular case, the record does not indicate that USCIS or any entity of the U.S. government has taken any action to rescind the lawful permanent resident status of the Applicant. However, relevant case law holds that when an applicant was never "lawfully admitted" into the United States, his or her lawful permanent resident status is void *ab initio.* In *Monet v. Immigration & Naturalization Serv.*, 791 F.2d 752 (9th Cir. 1986), the court held that the five-year statute of limitations applies to rescission proceedings only, and did not extend to deportation proceedings. In *In Re Koloamatangi,* 23 I & N Dec. 548, 551 (BIA 2003), the Board of Immigration Appeals (the Board) held that "the term 'lawfully admitted for permanent residence' did not apply to aliens who had obtained their permanent resident status by fraud, or *had otherwise not been entitled to it"* (emphasis added.) In *Shin v. Holder,* 607 F.3d 1213 (9th Cir. 2010), the court further noted that whether the lawful permanent resident status was acquired by fraud or error is immaterial. "Although the facts of both *Monet* and *Koloamatangi* involve acts of personal fraud or misrepresentation, their holdings broadly deem all grants of LPR status that were not in substantive compliance with the immigration laws to be void *ab initio." Shin* at 1217.

Similarly, regardless of whether the five year statute of limitations has passed, the Applicant cannot rely on an *unlawful* lawful permanent resident status for the purposes of deriving U.S. citizenship. Strict compliance with statutory prerequisites is required to acquire citizenship. See *Fedorenko v. U.S.*, 449 U.S. 490, 506 (1981).

With respect to the Applicant's claim that USCIS estopped from claiming that he adjusted unlawfully, the Administrative Appeals Office, like the Board, is without authority to apply the doctrine of equitable estoppel so as to preclude a component part of USCIS from undertaking a lawful course of action that it is empowered to pursue by statute or regulation. *See Matter of Hernandez-Puente*, 20 I&N Dec. 335, 338 (BIA 1991). Estoppel is an equitable form of relief that is available only through the courts. Our jurisdiction is limited to that authority specifically granted to it by the Secretary of the United States Department of Homeland Security. *See* DHS Delegation Number 0150.1 (effective March 1, 2003); *see also* 8 C.F.R. § 2.1 (2004). Our jurisdiction is also limited to those matters described at 8 C.F.R. § 103.1(f)(3)(E)(m) (as in effect on February 28, 2003). Accordingly, we cannot address the Applicant's estoppel claim.

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 K-A-Z-*, ID# 16753 (AAO Jan. 29, 2016)