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U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF J-E-D-

DATE: JULY 28, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Applicant, a native and citizen of France, seeks a Certificate of Citizenship. *See* the Nationality Act of 1940 (the 1940 Act), sections 201(g) and 205, 8 U.S.C. §§ 601(g) and 605, *repealed by* Immigration and Nationality Act, ch. 477, title IV, § 403 (a)(42), Pub. L. No. 82-414, 66 Stat. 163, eff. Dec. 24, 1952 (June 27, 1952). An individual born outside the United States who acquired U.S. citizenship at birth, or who automatically derived U.S. citizenship after birth but before the age of 18, may apply to receive a Certificate of Citizenship. Under this statute, for an individual claiming to be a U.S. citizen at birth, who was born to an unmarried U.S. citizen father, the father must have made the individual his legitimate child, and the father must have resided in the United States before the individual's birth.

The Field Office Director, Durham, North Carolina, denied the application. The Director concluded that the Applicant did not establish that he was born to a U.S. citizen parent, or that he could acquire citizenship at birth through his U.S. citizen stepfather. We dismissed the matter on appeal, finding that a biological parent-child relationship was required for the Applicant to acquire citizenship at birth through a parent under section 201(g) of the 1940 Act. We held that because the Applicant's U.S. citizen stepfather was not his biological father, the Applicant did not establish eligibility for acquisition of citizenship under section 201(g) of the 1940 Act.

The matter is now before us on a motion to reconsider. In the motion, the Applicant submits additional evidence and he reasserts his appeal claim that he was legitimated by his U.S. citizen stepfather under French law, and that a legal parent-child relationship was created upon acknowledgement and legitimation by his stepfather. The Applicant asserts further that the blood relationship requirement contained in section 201(g) of the 1940 Act unfairly discriminates against legitimated and adopted children and is unconstitutional.

The motion to reconsider will be denied.

I. LAW

The Applicant was born on [redacted] in France to an unmarried French national mother and an unknown father. His biological parents never married. His mother married a U.S. citizen who was not the Applicant's birth father on [redacted] 1954, when the Applicant was [redacted] years old. The

Applicant's stepfather acknowledged and legitimated the Applicant by marriage under French law. The Applicant seeks a Certificate of Citizenship indicating that he acquired U.S. citizenship at birth through his stepfather.

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, 1029 n.3 (9th Cir. 2001) (internal quotation marks and citation omitted). Acquisition of citizenship claims for individuals born abroad to a U.S. citizen and a foreign national parent between January 13, 1941, and December 24, 1952, fall within the provisions of section 201(g) of the 1940 Act, which provided that the following shall be nationals and citizens of the United States at birth:

> A person born outside of the United States and its outlying possessions of parents one of whom is a citizen of the United States who, prior to the birth of such person, has had ten years' residence in the United States or one of its outlying possessions, at least five of which were after attaining the age of sixteen years, the other being an alien. . . .

An individual who was born out of wedlock must also satisfy the requirements of section 205 of the 1940 Act, which provided, in pertinent part:

> The provisions of section 201, subsections (c), (d), (e), and (g), and subsection 204, subsections (a) and (b), hereof apply as the of the date of birth, to a child born out of wedlock, provided the paternity is established during minority, by legitimation, or adjudication of a competent court.

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).

II. ANALYSIS

The issue in this case is whether the Applicant acquired citizenship through his U.S. citizen stepfather. We determined in our decision on appeal that a biological parent-child relationship is required to acquire citizenship at birth through a parent under section 201(g) of the 1940 Act. Because the Applicant did not establish that he was born to a U.S. citizen parent, the statutory provisions contained in section 201(g) of the 1940 Act did not apply to him. We reaffirm that the Applicant did not acquire citizenship through his stepfather.

A. Acquisition of citizenship under section 201(g) of the 1940 Act

On this motion to reconsider, the Applicant reasserts his appeal claim that he was legitimated by his stepfather under French law, and that a legal parent-child relationship was created when his mother

and stepfather married and his stepfather acknowledged and legitimated him. The Applicant asserts further that the blood relationship requirement contained in section 201(g) of the 1940 Act unfairly discriminates against legitimated and adopted children and is unconstitutional, and that a biological parent-child relationship is therefore not necessary to acquire citizenship under section 201(g) of the 1940 Act.

We lack jurisdiction to rule on the constitutional issue raised by the Applicant. *See, e.g., Matter of Fuentes-Campos,* 21 I&N Dec. 905, 912 (BIA 1997) (like the Board of Immigration Appeals, we do not have appellate jurisdiction over constitutional issues.) Accordingly, we may not consider whether the provisions of former section 201(g), which require an individual to be born to a U.S. citizen parent in order to acquire citizenship at birth from that parent, are constitutional. Rather, our review is limited to a determination of whether the Applicant meets the requirements contained in the language of former section 201(g) of the Act.

The Applicant does not cite to any legal authority to corroborate his assertions that a blood relationship is not required in order for him to acquire citizenship under section 201(g) of the 1940 Act. Moreover, case law and Foreign Affairs Manual (FAM) guidance indicate that a blood relationship is required in order for a child born out of wedlock to acquire citizenship at birth through a U.S. citizen parent. *See* 7 FAM 1131.2 (stating that since 1790, there has been a requirement that at least one natural parent must have been a U.S. citizen when the child was born), and 7 FAM 1131.4 (absent a blood relationship between a child and the parent on whose citizenship the child's own claim is based, U.S. citizenship is not acquired.) *See also Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153, 155 (BIA 2001) (finding in a former section 301(g) of the Act acquisition of citizenship at birth case that a child must be born of a United States citizen in order to acquire citizenship at birth); *Martinez-Madera v. Holder*, 559 F. 3d 937 (9th Cir. 2009) (finding that an individual born of unmarried parents, neither of whom were citizens of the United States, could not be a citizen at birth); and *Marquez-Marquez v. Gonzales*, 455 F.3d 548 (5th Cir. 2006) (holding that former section 301(g) of the Act acquisition of citizenship at birth provisions required the person to be born of a citizen parent.)

We affirm that the record does not demonstrate that at least one of the Applicant's parents was a U.S. citizen at the time the Applicant was born, and the Applicant has not demonstrated that our decision was based on an incorrect application of law of Service policy. The Applicant is therefore statutorily ineligible to acquire citizenship at birth under former section 201(g) of the Act.

B. Derivative citizenship under former section 321 of the Act

Although not addressed in the Director's or our prior decisions, the Applicant also indicated on his Form N-600, Application for Certificate of Citizenship, that he derived citizenship through his mother, who became a naturalized citizen when the Applicant was 6 years old. *See* Immigration and Nationality Act (the Act) section 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).

Former section 321 of the Act provided that:

(a) 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 such 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 (1) of this subsection, or the parent 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.

(b) Subsection (a) of this section shall apply to an adopted child only if the child is residing in the United States at the time of naturalization of such adoptive parent or parents, in the custody of his adoptive parent or parents, pursuant to a lawful admission for permanent residence.

The Applicant asserted on his Form N-600 that he derived citizenship from his mother under former section 321(a)(3) of the Act, because he was born out of wedlock, and his natural father did not establish paternity by legitimation. Nevertheless, the record lacks evidence demonstrating that prior to his 18th birthday, the Applicant resided in the United States pursuant to a lawful admission for permanent residence, as required under former section 321(a)(5) of the Act. The term "lawfully admitted for permanent residence" means the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed. Section 101(a)(20) of the Act, 8 U.S.C. § 1101(a)(20). Because the record contains no evidence demonstrating that the Applicant resided in the United States pursuant to a lawful admission for permanent residence prior to his 18th birthday, the Applicant has not satisfied the conditions for derivative citizenship set forth in former section 321(a) of the Act.

The Applicant also stated in the brief submitted with his Form N-600, that he was adopted by his U.S. citizen stepfather. He thereby indicated that he was eligible for derivative citizenship under former section 321(b) of the Act. However, he provided no information about when and where the adoption took place, and he submitted no evidence demonstrating that a legal adoption occurred. Even if the Applicant were adopted, he did not establish that his stepfather was a U.S. citizen by naturalization, as indicated in section 322(b). In addition, as discussed above, the record contains no evidence establishing that the Applicant resided in the United States pursuant to lawful admission for permanent residence. The Applicant therefore does not satisfy the conditions for derivative citizenship set forth in former section 321(b) of the Act.

III. CONCLUSION

The Applicant has not demonstrated that he was born to a U.S. citizen parent, or that he acquired citizenship at birth under section 201(g) of the 1940 Act. The Applicant also did not establish that he derived citizenship through his naturalized citizen mother under former section 321 of the Act. The Applicant has therefore not established eligibility for U.S. citizenship.

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). The Applicant has not met that burden. Accordingly, we deny the motion to reconsider.

ORDER: The motion to reconsider is denied.

Cite as *Matter of J-E-D-*, ID# 15582 (AAO July 28, 2016)