U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF G-A-E-

DATE: NOV. 30, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Applicant, a native and citizen of Jamaica, seeks a Certificate of Citizenship. *See* Immigration and Nationality Act (the Act) section 321, 8 U.S.C. § 1432, *repealed by* Sec. 103(a), title I, Child Citizenship Act of 2000, Pub.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). 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. Generally, an individual claiming automatic U.S. citizenship after birth and who was born between December 24, 1952, and February 27, 1983, must meet the last of certain conditions by February 26, 2001. For individuals born to foreign national parents, only one of whom naturalized before the individual turned 18, the individual may become a U.S. citizen if one of three conditions are met. That individual's non-naturalized parent is deceased, the U.S. citizen parent has custody over the individual after a legal separation or divorce, or, if the individual was born to unmarried parents and is claiming to be a U.S. citizen through a naturalized mother, the father must not have made the individual his legitimate child.

The District Director, New York, New York, denied the application. The Director concluded that the Applicant did not derive U.S. citizenship from his mother under former section 321(a) of the Act, because his paternity was established by legitimation under the laws in New York.[1]

We dismissed the matter on appeal. We acknowledged that the Applicant demonstrated that paternity was not established by legitimation under Jamaican law, where the Applicant was born. We determined, however, that the record showed that the Applicant resided in New York as a lawful permanent resident when his mother naturalized and prior to his 18th birthday, and that his father established paternity by legitimation under New York law during the relevant time period.[2] We found further that the Applicant did not establish that deference should be accorded to the law in his

[1] The Director also determined that the Applicant was ineligible for derivative citizenship under section 320 of the Act, 8 U.S.C. § 1431. The Applicant did not contest this finding on appeal or on motion.

[2] Although the Applicant's birth certificate lists only his mother's name and does not contain paternity information, the identity of the Applicant's father is not in dispute. The Applicant's last name also reflects his father's identity. In addition, evidence in the record, including the Applicant's immigrant visa documentation, the Applicant's parents' separation agreement, the Applicant's Form I-213, Record of Deportable Alien, and removal proceedings and county court-related documentation, reflect the Applicant's father's identity.

country of birth, because a conflict existed between the legitimation law in Jamaica and the law in New York.

The matter is now before us on a motion to reconsider. The Applicant claims that we erred in applying New York State legitimation law in his case. Specifically, he indicates that the Board of Immigration Appeals (the Board) determined that under former section 321(a)(3) of the Act, the establishment of paternity by legitimation occurs only pursuant to the law in the child's country of birth.[3]

The motion to reconsider will be denied.

I. LAW

The Applicant seeks a Certificate of Citizenship indicating that he derived U.S. citizenship from his U.S. citizen mother. The Applicant was born in Jamaica on [redacted] to unmarried foreign national parents. A marriage certificate included in the record reflects that the Applicant's parents married in Jamaica on [redacted] 1985; however, the marriage was annulled in Jamaica in 2012 pursuant to a decree absolute because the father's prior marriage was not legally dissolved until [redacted] 1985. The Applicant was admitted to the United States as a lawful permanent resident in September 1987, and his mother became a citizen through naturalization in June 1994. There is no evidence demonstrating that the Applicant's father is a U.S. citizen.

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). Here, the Applicant's citizenship claim must be considered under the provisions of former section 321 of the Act.[4]

[3] The Applicant does not claim that he derived citizenship under provisions contained in former section 321(a)(1) and (a)(2) of the Act, and the record does not reflect eligibility under these provisions. In addition, the Applicant does not contest our previous finding that he did not satisfy provisions related to legal separation of his parents, as discussed in former section 321(a)(3) of the Act. The Applicant also does not contest our finding that deference is not accorded to the legitimation law of an individual's country of birth, when a conflict exists between the country of birth law and the law where the individual subsequently resided prior to his or her 18th birthday.

[4] 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 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 individuals who were not yet 18 years old as of February 27, 2001. Because the Applicant was over the age of 18 on February 27, 2001, he is not eligible for the benefits of the amended Act. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). The Applicant's citizenship claim is therefore considered under the provisions of former section 321 of the Act.

Former section 321 of the Act provided in pertinent part 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:
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> (1) The naturalization of both parents; or
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> (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.

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

As stated above, the Applicant may establish derivative citizenship through his mother if he was born out of wedlock, he resided in the United States pursuant to a lawful admission for permanent residence when his mother became a naturalized U.S. citizen, his paternity was not established by legitimation, and all of these requirements, including the mother's naturalization, were satisfied before the Applicant's 18th birthday on [redacted]

The Applicant has established that he meets several requirements for derivative citizenship under former section 321(a) of the Act. Specifically, the record reflects that the Applicant resided in the United States as a lawful permanent resident, and that his mother became a U.S. citizen through naturalization prior to the Applicant's 18th birthday. The Applicant therefore meets the conditions contained in former section 321(a)(4) and (a)(5) of the Act. The record also reflects that the Applicant was born out of wedlock, and that paternity was not established by legitimation in Jamaica, his country of birth, as discussed, in part, in former section 321(a)(3) of the Act. *See*

Matter of Hines, 24 I&N Dec. 544 (BIA 2008), *Matter of Cross*, 26 I&N Dec. 486 (BIA 2015). Nevertheless, as discussed in our previous decision, the record demonstrates that the Applicant's paternity was established by legitimation in New York. The issue on motion is therefore whether the Applicant has demonstrated that under former section 321(a)(3) of the Act, the establishment of paternity by legitimation may only be established in his place of birth, and not in the jurisdiction of his subsequent residence. The Applicant claims that recent Board cases indicate legitimation under former section 321(a)(3) of the Act may only be considered under the laws of his place of birth, not under those for a subsequent residence.

The entire record has been reviewed and considered in rendering a decision on the motion. Upon review, we find that the Applicant has not demonstrated that we erred in finding that his paternity was established by legitimation under the law in New York.

A. New York Law Applies in Determining Whether the Applicant's Paternity has been Established by Legitimation

On motion, the Applicant cites to the Board decision *Matter of Hines*, and states that the respondent in that case could derive citizenship through his mother if he proved that his father had not established paternity by legitimation under the domestic laws of that country. *See Matter of Hines*, 24 I&N Dec. at 547-48. The Applicant also cites to language in the Board decision *Matter of Cross*, which states "although Jamaica enacted laws that effectively eliminated the legal distinction between children born in wedlock and those born out of wedlock, the country has retained a formal means of legitimating – the marriage of the biological parents." *See Matter of Cross*, 26 I&N Dec. at 490. The Applicant concludes, based on this language, that paternity by legitimation may be established only in a child's country of birth for former section 321(a)(3) of the Act purposes.

We find that the Board cases referred to by the Applicant do not demonstrate that paternity by legitimation is established only under the law in the child's country of birth. We acknowledge that, based on the facts set forth in *Matter of Hines* and *Matter of Cross*, the Board limited its analysis to whether paternity was established by legitimation in the countries where the respondents were born. However, there was no discussion or indication in those cases that the respondents moved to another country with their fathers. Moreover, the cases did not address the issue or state that under former section 321(a) of the Act, the establishment of paternity by legitimation is limited to the law in the child's place of birth, or that an individual may not establish paternity by legitimation under the law of another country if applicable requirements for doing so are met prior to the child's 18th birthday.

The Congressional purpose behind the requirement under former section 321(a)(3) of the Act, that paternity not be established by legitimation, was to ensure that a father with legally cognizable parental rights over a child did not have those rights taken away or interfered with by a naturalizing parent. *See Barthelemy v. Ashcroft*, 329 F.3d 1062, 1066 (9th Cir. 2003). The requirement contained in former section 321(a)(3) of the Act therefore does not limit where a father may establish his paternity by legitimation prior to the child's 18th birthday. *See also, Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-43 (1994) (interpretation of

statutory language begins with the terms of the statute itself, and if those terms, on their face, constitute a plain expression of congressional intent, they must be given effect.)

The Board has also stated that the order in which former section 321(a) of the Act requirements are fulfilled is irrelevant, as long as all of the conditions are satisfied before an applicant's 18th birthday. *See Matter of Baires-Larios*, 24 I&N Dec. 467, 470 (BIA 2008). The Board has clarified further that "the language of former section 321(a)(3) itself . . . requires a person born out of wedlock to prove both that he was a "child" when his mother naturalized and that his "paternity . . . ha[d] not been established by legitimation" at that time. *See Matter of Cross*, 26 I&N Dec. at 491. The U.S. Second Circuit Court of Appeals, under whose jurisdiction the Applicant's case falls, has also clarified that the statutory terms contained in former section 321(a) of the Act simply reflect that all events must occur prior to the child's 18th birthday. *See Langhorne v. Ashcroft*, 377 F.3d 175, 178 - 79 (2d Cir. 2004) ("A natural reading of these terms, taken together, therefore requires *all* of the conditions in Section 321(a)(3) [of the former Act] . . . to occur before the child turns eighteen.) We find, therefore, that the establishment of paternity by legitimation is therefore not limited to an individual's country of birth.

B. Under New York Law, the Applicant's Paternity has been Established by Legitimation

The record in this case reflects that the Applicant, his mother, and his father emigrated to the United States, and that they lived together in New York when the mother naturalized and prior to the Applicant's 18th birthday. For purposes of former section 321(a)(3) of the Act, we therefore look not only to legitimation laws in Jamaica, the Applicant's country of birth, but also to the law in New York in order to determine whether the Applicant's father established paternity by legitimation prior to the Applicant's 18th birthday.[5] *See Fierro v Reno*, 217 F3d 1, 4 (1st Cir. 2000) ("Legal relationships between parents and children are typically governed by state law, there being no federal law of domestic relations." (Internal quotes and citations omitted)). *See also Minasyan v. Gonzales*, 401 F3d at 1076 ("where the term in question involves a legal relationship that is created by state or foreign law, the court must begin its analysis by looking to that law. . . . This is especially true where a statute deals with a familiar relationship." (Citations omitted)).

From 1969 to July 20, 2008, New York Domestic Relations Law, Article 3, Section 24 provided that:

> A child heretofore or hereafter born of parents who prior or subsequent to the birth of such child shall have entered into a civil or religious marriage, or shall have

[5] The Applicant's immigrant visa application and the separation agreement signed by the Applicant's mother and father reflect that the Applicant moved to New York with both of his parents in 1987 (when he was [redacted] and that they lived together in New York until 1992, when the Applicant was [redacted] Because the Applicant and his father lived in New York after the Applicant was admitted into the country as a lawful permanent resident and prior to the Applicant's mother's naturalization in 1994 (when the Applicant was [redacted] the legitimation laws in New York apply to the Applicant's derivative citizenship claim.

> consummated a common-law marriage where such marriage is recognized as valid, in the manner authorized by the law of the place where such marriage takes place, is the legitimate child of both birth parents notwithstanding that such marriage is void or voidable or has been or shall hereafter be annulled or judicially declared void.

The record reflects that the Applicant's parents married in Jamaica on [redacted] 1985; however, the marriage was annulled pursuant to a decree absolute on [redacted] 2012. As discussed above and in our decision upon appeal, under New York law, the Applicant was legitimated through his parents' marriage even though the marriage was annulled. The Applicant's paternity was therefore established by legitimation in New York.

Requirements for U.S. citizenship, as set forth in the Act, are statutorily mandated by Congress and a Certificate of Citizenship can only be issued when an applicant meets the relevant statutory provisions. *See INS v. Pangilinan*, 486 U.S. 875, 883-885 (1988). Strict compliance with statutory prerequisites is required to acquire citizenship. *See Fedorenko v. U.S.*, 449 U.S. 490, 506 (1981). Upon review, we find that the Applicant has not established that his paternity may be established only under the law in his place of birth, and consequently, that he derived citizenship through his mother under former section 321(a) of the Act.

We find that the Applicant presented no legal authority to support his claim that under former section 321(a) of the Act, the establishment of paternity by legitimation is limited to the law in the child's place of birth. The Applicant therefore did not demonstrate that we erred in finding that his paternity was established by legitimation under the law in New York, and that he has not demonstrated that he derived citizenship through his mother under former section 321(a) of the Act.

III. CONCLUSION

In view of the above, the Applicant has not demonstrated that our finding on appeal was in error, or that we incorrectly found that he did not derive U.S. citizenship through his mother under former section 321(a) of the Act.

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.

ORDER: The motion to reconsider is denied.

Cite as *Matter of G-A-E-*, ID# 114282 (AAO Nov. 30, 2016)