U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF G-F-

DATE: JUNE 30, 2017

APPEAL OF WEST PALM BEACH, FLORIDA FIELD OFFICE DECISION

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

The Applicant, who was born in Haiti in [redacted] seeks a Certificate of Citizenship indicating she derived U.S. citizenship from her father. *See* Immigration and Nationality Act (the Act) section 321, 8 U.S.C. § 1432, *repealed by* Sec. 103(a), title I, Child Citizenship Act of 2000, Pub.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. An individual born to foreign national parents must show that she is residing in the United States as a lawful permanent resident, and that both parents became naturalized U.S. citizens before the individual turned 18. 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 Director of the West Palm Beach, Florida, Field Office denied the application, concluding that the record did not establish that both parents naturalized before the Applicant reached the age of 18.

On appeal, the Applicant submits school and passport records, and asserts that she is eligible under section 320 of the Act as she resided in the United States with her U.S. citizen father, pursuant to a lawful admission for permanent residence, before reaching the age of 18.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

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). The Child Citizenship Act of 2000 (the CCA), Pub. L. No. I 06-395, 114 Stat. 1631 (Oct. 30,

2000), which took effect on February 27, 2001, amended former 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 sections 320 and 322 of the Act apply only to individuals who were not yet 18 years old as of February 27, 2001. The Applicant was born in Haiti in [redacted] to married parents, neither of whom were U.S. citizens at that time.[1] Thus, although she claims she is eligible for derivative citizenship under the CCA, because the Applicant was over the age of 18 on February 27, 2001, she is not eligible for the benefits of the amended Act. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). Her claim is therefore considered under the provisions of former section 321 of the Act, which 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
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> (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
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> (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.

II. ANALYSIS

We find that the Applicant satisfied some requirements contained in former section 321 of the Act. Specifically, her father naturalized as a U.S. citizen, and she later resided in the United States pursuant to a lawful admission for permanent residence, while under the age of 18. In order to have derived U.S. citizenship under former section 321 of the Act, however, she must additionally show either that both parents naturalized before she reached the age of 18, or that she met one of the

[1] She reported on Form N-600 that her father was married once only, to her mother, in 1978. USCIS records confirm the Applicant's father naturalized as a U.S. citizen in 1993.

conditions to derive citizenship from only one naturalized parent. She has not asserted, and the record does not reflect, that the mother ever became a naturalized U.S. citizen, nor that the mother passed away before the Applicant's 18th birthday. Therefore, she cannot derive citizenship under former sections 321(a)(1) or (a)(2) of the Act, or the latter part of section 321(a)(3) of the Act requiring the mother's naturalization. The remaining issue, therefore, is whether she meets the requirement in the beginning of section 321(a)(3) of the Act, that her father had legal custody of her after a legal separation from her mother. We find, upon review of the record, that he did not.

A. Legal Custody After Legal Separation

She did not satisfy that requirement because the record does not show that her parents were legally separated, nor that she resided in her father's legal custody in the United States before reaching the age of 18. The term, "legal separation" means "either a limited or absolute divorce obtained through judicial proceedings." *See Matter of H,* 3 I&N Dec. 742, 744 (BIA 1949). Although she submitted a marriage certificate reflecting her parents were married before her birth, she reports that they remain married. She did not submit evidence reflecting a divorce obtained through judicial proceedings at any time, much less before she turned 18 years old. In the absence of a legal separation, and her U.S. citizen father's subsequent legal custody, she cannot derive U.S. citizenship under former section 321(a)(3) of the Act.

III. CONCLUSION

The Applicant could not derive U.S. citizenship from her father because he did not have legal custody of her after a legal separation from her mother.

ORDER: The appeal is dismissed.

Cite as *Matter of G-F-*, ID# 336032 (AAO June 30, 2017)