U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF P-A-M-M-

DATE: MAY 31, 2017

APPEAL OF LOS ANGELES, CALIFORNIA FIELD OFFICE DECISION

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

The Applicant, a native of the Philippines, seeks a Certificate of Citizenship indicating he derived U.S. citizenship from his mother. *See* Immigration and Nationality Act (the Act) section 320, 8 U.S.C. § 1431. An individual born outside the United States who automatically derived U.S. citizenship after birth but before the age of 18, may apply to receive a Certificate of Citizenship. Generally, for an individual claiming automatic U.S. citizenship after birth and who was born after February 27, 1983, the individual must have at least one U.S. citizen parent and be residing in that parent's custody in the United States as a lawful permanent resident before 18 years of age.

The Director of the Los Angeles, California Field Office denied the application, concluding the Applicant did not demonstrate that he resided in the legal and physical custody of his U.S. citizen mother as required under section 320 of the Act.

On appeal, the Applicant submits additional evidence and asserts that the record shows he resided in the United States in his mother's legal and physical custody, and that the Director erred in not approving his Form N-600, Application for Certificate of Citizenship.

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 Applicant was born after February 27, 1983, in the Philippines to married foreign national parents. As such, section 320 of the Act, as amended by the Child Citizenship Act of 2000, Pub. L. No 106-395, 114 Stat.1631 (CCA) applies in his case.

Section 320 of the Act provides, in pertinent part:

> (a) 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 18 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 regulation at 8 C.F.R. § 320.1 provides definitions for certain terms arising within section 320 of the Act. In particular, "*legal custody* refers to the responsibility for and authority over a child." Specifically, the regulation states, in pertinent part:

> (1) [I]n the case of a child of divorced or legally separated parents, [U.S. Citizenship and Immigration Services (USCIS)] will find a U.S. citizen parent to have legal custody of a child, for the purpose of the CCA, where there has been an award of primary care, control, and maintenance of a minor child to a parent by a court of law or other appropriate government entity pursuant to the laws of the state or country of residence. [USCIS] will consider a U.S. citizen parent who has been awarded "joint custody," to have legal custody of a child. There may be other factual circumstances under which [USCIS] will find the U.S. citizen parent to have legal custody for purposes of the CCA.

Neither the Act nor the regulations define the term "physical custody." However, "physical custody" has been considered in the context of "actual uncontested custody" in derivative citizenship proceedings and interpreted to mean actual residence with the parent. *See Matter of M-*, 3 I&N Dec. 850, 856 (BIA 1950) (father had "actual uncontested custody" of a child where the father lived with the child, took care of the child, and the mother consented to his custody); *Bagot v. Ashcroft*, 398 F.3d 252, 267 (3rd Cir. 2005) (father had actual physical custody of the child where the child lived with him and no one contested the father's custody). The Act defines the term "residence" in pertinent part as, "the place of general abode . . . [which means his or her] principal, actual dwelling place in fact, without regard to intent." Section 101(a)(33) of the Act, 8 U.S.C. § 1101(a)(33).

An applicant must establish that he meets each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I& N Dec. 369, 375-76 (AAO 2010). In other words, an applicant must show that what he claims is "more likely than not" or "probably" true. To determine whether an applicant met his burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.* at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989).

II. ANALYSIS

The Applicant has satisfied some of the requirements listed above. Specifically, he obtained lawful permanent residency and his mother naturalized when he was under 18 years of age. The remaining issue, therefore, is whether the Applicant sufficiently demonstrated that he resided in the United States in his U.S. citizen mother's legal and physical custody before he reached the age of 18, as required in section 320(a)(3) of the Act.

The Applicant claims on appeal that he has "been living and in the legal and physical custody of [his] biological mother" and that his "mother has been taking care of [him] and making decisions on [his] behalf" ever since his admission. In support, he submitted a California court order awarding joint legal custody to his father and mother and sole physical custody to the father (observing that the Applicant lived with his father in the Philippines at that time). However, because he was residing outside of California at the time of the order, the record is unclear on how the court had jurisdiction to make and enforce such an order. The California Family Code lists four circumstances under which a California court has jurisdiction to determine custody of a minor child in divorce proceedings. *See* Cal. Fam. Code § 3421 (2000). Although the boilerplate language on the custody order form reflects that the issuing court has jurisdiction to make custody determinations, the record here does not indicate jurisdiction was specifically considered, nor is there an indication of which of those four circumstances the California court applied in the Applicant's custody determination. Therefore, the Applicant has not shown, for purposes of section 320 of the Act, that the California court made the custody order in accordance with the "laws of the state or country of residence." 8 C.F.R. § 320.1.

A. Legal Custody

Furthermore, other documents do not reflect that a "court of law or other appropriate government entity" made a qualifying custody determination. *Id.* At the time of the 2006 California divorce, the Applicant resided in the Philippines. The record does not show whether a court of law or other appropriate government entity in the Philippines ever awarded primary care, control, and maintenance of the Applicant to either parent. A discussed above, although the California court awarded joint custody, the Applicant did not reside in California at that time, and the order as submitted did not establish jurisdiction as defined in California Family Code. With the Form N-600, the Applicant submitted a copy of his father's 2011 notarized "Affidavit of Consent," indicating the father's consent for the Applicant to "join his mother" in the United States. The Applicant newly submits a 2011 "Agreement" signed by both parents, in which they indicate their intent to modify the divorce judgment by transferring custody from the father to the mother, and that the Applicant would "join his mother" in the United States. Neither the document, however, reflect issuance by a court of law or other appropriate government entity in the Philippines. The record further does not show a determination of custody in California after the Applicant began residing there, or that the California order was ever vacated, stayed, or otherwise formally modified. As a result, the Applicant did not sufficiently demonstrate that he resided in his mother's legal custody, as defined in 8 C.F.R. § 320.1, before reaching the age of 18.

B. Physical Custody

Although on appeal the Applicant claims he meets the physical custody condition, and submits affidavits and court documents in support, we find there is insufficient evidence to demonstrate he resided with his mother in the United States before he turned 18 years old. In [redacted] when the Applicant was admitted as a lawful permanent resident, he reported on Form DS-230, Application for Immigrant Visa and Alien Registration, that his final residence in the United States would be in [redacted] California, with his mother. Although the Applicant submitted additional evidence which may show residence in [redacted] California, it was dated *after* he reached the age of 18, and therefore has little bearing on the question of physical custody *before* age 18. The record does not include sufficient evidence[1] showing actual residence with the mother in the United States *before* the Applicant reached the age of 18. The record, therefore, does not sufficiently establish the claimed physical custody as required by section 320 of the Act.

III. CONCLUSION

The Applicant did not establish, by a preponderance of the evidence, that he resided in the United States in the legal or physical custody of his U.S. citizen mother while under the age of 18 as required under section 320(a)(3) of the Act.

ORDER: The appeal is dismissed.

Cite as *Matter of P-A-M-M-*, ID# 317512 (AAO May 31, 2017)

[1] Evidence of residence may include, but is not limited to, school or medical records showing joint residence, tax returns or other financial records showing dependents, lease or other housing documents naming household members, or other similar documents as suggested in the form instructions.