U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF M-J-H-

DATE: SEPT. 26, 2017

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Applicant, who was born in Jamaica in 1986, seeks a Certificate of Citizenship indicating he derived citizenship from his father. *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 Atlanta, Georgia, Field Office denied the application, concluding that the Applicant did not meet requirements to derive citizenship from his father under section 320 of the Act. The Applicant appealed the Director's decision to our office. He did not contest the finding that he was ineligible to derive citizenship under section 320 of the Act, and instead claimed derivative citizenship through his father pursuant to regulations applicable to the U.S. Coast Guard and set forth at 33 C.F.R. § 141.25(b)(1).

We dismissed the appeal. In our decision, which we incorporate here by reference, we determined that the Applicant's derivative citizenship claim was not governed by 33 C.F.R. § 141.25(b)(1), and that instead, section 320 of the Act was the applicable derivative citizenship law in his case. Because the Applicant was over the age of 18 when his father became a U.S. citizen, we determined that the Applicant was ineligible to derive citizenship through his father under section 320 of the Act.

In the present motion to reopen and reconsider, the Applicant asserts that we erred in not approving his citizenship application. He does not contest our finding that he is ineligible to derive U.S. citizenship under section 320 of the Act. He now claims, though, that former section 322 of the Act applies to his derivative citizenship claim, and that he met requirements to derive citizenship through his paternal grandmother under this provision of law. In support, he refers to language contained in Volume 7 of the U.S. Department of State, Foreign Affairs Manual (7 FAM) section 1156.12. He also submits copies of his father's birth certificate and his grandmother's naturalization certificate, and evidence that he was admitted into the United States with a visitor's visa in 1993.

Upon review, we will deny the motion to reopen and motion to reconsider.

I. LAW

A motion to reopen is based on documentary evidence of *new facts*, and a motion to reconsider is based on an *incorrect application of law of policy*. The requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2), and the requirements of a motion to reconsider are located at 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

As we discussed in our prior decision, for derivative citizenship purposes, we apply "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, as amended by the Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631 (CCA), which was in effect when the Applicant was admitted to the country as a lawful permanent resident (in 2002), when he turned 18 years of age (in 2004), and when his father became a naturalized U.S. citizen (in 2006), applies to the Applicant's derivative citizenship claim.

The Applicant now contends, however, that former section 322 of the Act, of 1994, Pub. L. 103-416, Title I, 108 Stat. 4305 (Oct. 25, 1994), which was in effect prior to amendment by the CCA, applies to his derivative citizenship claim.

Former section 322 of the Act stated, in pertinent part:

> a) Application of citizen parents; requirements
>
> > A parent who is a citizen of the United States may apply to the Attorney General [Secretary, Department of Homeland Security, "Secretary"] for a certificate of citizenship on behalf of a child born outside the United States. The [Secretary] shall issue such a certificate of citizenship upon proof to the satisfaction of the [Secretary] that the following conditions have been fulfilled:
> >
> > 1) At least one parent is a citizen of the United States, whether by birth or naturalization.
> >
> > 2) The child is physically present in the United States pursuant to a lawful admission.
> >
> > 3) The child is under the age of 18 years and in the legal custody of the citizen parent.
> >
> > 4) If the citizen parent is an adoptive parent of the child, the child was adopted by the citizen parent before the child reached the age

> of 16 years and the child meets the requirements for being a child under subparagraph (E) or (F) of section 101(b)(1).
>
> 5) If the citizen parent has not been physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years –
>
> A) the child is residing permanently in the United States with the citizen parent, pursuant to a lawful admission for permanent residence, or
> B) a citizen parent of the citizen parent has been physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years.

b) Attainment of citizenship status; receipt of certificate

> Upon approval of the application . . . [and] upon taking and subscribing before an officer of the Service within the United States to the oath of allegiance required by this chapter of an applicant for naturalization, the child shall become a citizen of the United States and shall be furnished by the [Secretary] with a certificate of citizenship.

Because the Applicant was born abroad, he is presumed to be a foreign national. He therefore 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 on motion to reopen and reconsider is whether the Applicant established that our decision was erroneous based on new facts or an incorrect application of law or USCIS policy. We find the Applicant has provided insufficient evidence to establish error in our prior decision.

To support his claim that our prior decision was incorrect, the Applicant submits Department of State guidance on former section 322 requirements contained at 7 FAM section 1156.12. Specifically, he indicates that because his grandmother became a naturalized U.S. citizen in 1999 and he began residing with her in the United States in 1993, he met all of the criteria for citizenship under former section 322 of the Act.

Contrary to the Applicant's assertions, the FAM guidance he refers to does not demonstrate that he satisfied conditions to derive citizenship under former section 322 of the Act. As we stated previously, it is the law in effect at the time critical events giving rise to eligibility occurred that

applies for derivative citizenship purposes. *Minasyan v. Gonzales*, *supra*. A preliminary critical event for derivative citizenship eligibility under former section 322 of the Act was having at least one U.S. citizen parent; however, the Applicant's father did not become a U.S. citizen until 2006, after former section 322 of the Act was amended by the CCA (in 2000), and no longer in effect. The Applicant was therefore not eligible for derivative citizenship when former section 322 of the Act was in effect.

In addition, the Applicant was over the age of 18 when he filed his citizenship application (in 2014), and former section 322 of the Act and the regulations promulgated therein required the child to be under the age of 18 both at the time of application for a Certificate of Citizenship, and at the time of admission to U.S. citizenship. As the Board of Immigration Appeals noted in *Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153, 155 (BIA 2001):

> [S]ection 322(a), as it was in effect at the time the respondent filed his Application for Certificate of Citizenship, clearly stated that an individual must be under 18 years of age at the time the application for such certificate is filed by the citizen parent of the individual. Similarly, the regulation set forth at 8 C.F.R. § 322.2(a) (1997) clearly states that "a child on whose behalf an application for naturalization has been filed . . . must: (1) Be unmarried and under 18 years of age, both at the time of application and at the time of admission to citizenship[.]

As stated in our prior decision, section 320 of the Act, as amended by the CCA, was in effect when the Applicant was admitted to the country as a lawful permanent resident, when he turned 18 years of age, and when his father became a naturalized U.S. citizen. It therefore applies to the Applicant's derivative citizenship claim. It is uncontested that the Applicant was over the age of 18 when his father became a naturalized U.S. citizen. He therefore does not meet the age requirements set forth in section 320(a)(2) of the Act. Accordingly, he does not qualify for derivative citizenship under section 320 of the Act or any other citizenship statute.

III. CONCLUSION

In view of the above, the Applicant has provided insufficient evidence demonstrating that the conclusions we reached in our prior decision were erroneous, or that we incorrectly applied law or USCIS policy.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of M-J-H-*, ID# 599563 (AAO Sept. 26, 2017)