U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF F-J-A-G-

DATE: JUNE 29, 2018

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Applicant, who was born to unmarried parents in Mexico in 1979, seeks a Certificate of Citizenship claiming he derived U.S. citizenship from his mother. Immigration and Nationality Act (the Act) section 321, 8 U.S.C. § 1432, *repealed by* Sec. 103(a), title I, Child Citizenship Act of 2000, Pub.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). To establish derivative citizenship under former section 321 of the Act from the mother, an individual must show that he or she has not been legitimated and resided in the United States as a lawful permanent resident at the time of the mother's naturalization, or began to permanently reside in the United States thereafter, but before turning 18 years of age.

The Director of the San Fernando Valley Field Office, Chatsworth, California denied the application concluding that the Applicant did not derive U.S. citizenship under former section 321 of the Act, because he had never held lawful permanent resident status in the United States. We dismissed the appeal on the same ground, explaining that both the Board of Immigration Appeals (the Board) and the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit), in whose jurisdiction these proceedings arose, held that a child's lawful admission for permanent residence was a requirement under former section 321 of the Act. The Applicant subsequently filed a motion to reconsider, asserting that we improperly relied on the Board's precedent decision and Ninth Circuit's law, because he had moved to North Carolina, and his U.S. citizenship claim should have been adjudicated pursuant to a decision of the U.S. Court of Appeals for the Second Circuit (Second Circuit), where lawful permanent residence was not required to derive citizenship. We denied the motion, as the evidence indicated that the Applicant's citizenship proceedings originated in California, within the Ninth Circuit's jurisdiction. We further explained that even if he was subject to jurisdiction of the U.S. Court of Appeals for the Fourth Circuit (Fourth Circuit), we would still deny his application following the Board's precedent, as the Fourth Circuit has not decided the issue.

The matter is now before us on a second motion to reconsider. The Applicant reasserts that we should interpret the provisions of former section 321 of the Act in the light most favorable to him, and grant his application based on the Second Circuit's ruling in *Nwozuzu v. Holder*, 726 F.3d 323 (2d Cir. 2013). He argues further that the legislative history of the derivative statues supports his claim that lawful permanent residence is not a requirement for derivative citizenship.

We will deny this second motion to reconsider.

I. LAW

A motion to reconsider must establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). The motion to reconsider must be supported by a pertinent precedent or adopted decisions, statutory or regulatory provisions, or statement of U.S. Citizenship and Immigration Services (USCIS) or Department of Homeland Security policy. We may grant a motion that meets these requirements and establishes eligibility for the requested benefit.

II. ANALYSIS

The issue on motion is whether the Applicant has established that our previous decision was incorrect based on an incorrect application of law or USCIS policy. We find that he has not.

In the previous motion, the Applicant argued that pursuant to the Second Circuit's holding in *Nwozuzu v. Holder*, *supra*, his unlawful residence in the United States prior to the age of 18 years was sufficient to satisfy the requirement of former section 321(a)(5) of the Act, and that we were obligated to follow that decision in adjudication of his citizenship claim. We explained, however, that the Second Circuit's holding was binding only within that jurisdiction and we were not required to follow it in cases arising outside of the Second Circuit. Rather, because the record reflected that that the Applicant lived within the jurisdiction of the Ninth Circuit when he was under the age of 18 years, when his mother naturalized, and when he filed the instant Form N-600 claiming derivative citizenship, we were bound by the Ninth Circuit's decision in *Romero-Ruiz v. Mukasey*, 538 F.3d 1057, 1063 (9th Cir. 2008), and the Board's precedent in *Matter of Nwozuzu*, 24 I&N Dec. 609 (BIA 2008). As both decisions hold that a child cannot satisfy the residence requirement under former section 321(a)(5) of the Act unless he or she was lawfully admitted to the United States for permanent residence, and the Applicant did not meet this requirement, we concluded that he was not eligible to derive U.S. citizenship from his mother.

The Applicant asserts, based on the Second Circuit's reasoning in *Nwozuzu v. Holder*, *supra*, that the legislative history of the derivative citizenship statutes indicates that Congress intended the phrases "is residing in the United States pursuant to lawful admission for permanent residence" and "begins to reside permanently in the United States" in former section 321(a)(5) to apply to distinct classes of children, and that lawful permanent residence is not therefore a prerequisite to derivative citizenship eligibility. As we have previously discussed, however, the Second Circuit's interpretation of former section 321(a)(5) of the Act in not binding on us in adjudication of the Applicant's citizenship claim, as there is no evidence that his citizenship proceedings originated within the jurisdiction of the Second Circuit; rather, as he resided in California during the relevant time period prior to his 18th birthday, we must follow the Ninth Circuit law.

The Applicant claims nevertheless that the provisions of section 321(a)(5) of the Act are ambiguous, and because he is currently residing outside of the Ninth Circuit's jurisdiction, we are obligated to

adjudicate his citizenship claim pursuant to the Second Circuit's holding. In support of this claim, he references the decision of the U.S. Supreme Court, *INS v. Cardoza-Fonseca*, 480 U.S. 421, 449 (1987), and states that the Court recognized the longstanding principle that lingering ambiguities in deportation statutes should be construed in favor of the foreign national. We do not find this argument persuasive, as the Court has also emphasized in that case that "[t]he judiciary is the final authority on issues of statutory construction." *Id.* at 447-48 (citing *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984)). Here, the Ninth Circuit has held that "[t]he phrase 'or thereafter begins to reside permanently' [in former section 321(a)(5) of the Act] alters only the *timing* of the residence requirement, not the requirement of *legal* residence." *Romero-Ruiz v. Mukasey*, 538 F.3d at 1062 (emphasis in original). Again, because the Applicant's citizenship claim arose in California, the Ninth Circuit's interpretation of former section 321(a)(5) of the Act is binding on us in adjudicating his citizenship claim. There is nothing in *Cardoza-Fonseca* to indicate that we may apply an interpretation of a citizenship statute from another circuit if it benefits an applicant regardless of the precedent law in his or her personal jurisdiction.

The Applicant again argues that because he currently resides in the jurisdiction of the Fourth Circuit, which has not decided the issue of the residence requirement under former section 321(a)(5) of the Act, we should read the statute pursuant to the Second Circuit's interpretation, and find that he derived U.S. citizenship from his mother even though his residence in the United States was not lawful. We have addressed this argument in our previous decision, however, explaining that even if were to find that the Fourth Circuit law was controlling in his case (which we did not) in absence of a published Fourth Circuit's ruling on the issue, we would be bound to follow the Board's precedent decision in *Matter of Nwozuzu*, *supra*, and to deny the Applicant's derivative citizenship claim based on his lack of lawful admission to the United States for lawful permanent residence.

III. CONCLUSION

The Applicant has not shown that in reaching this conclusion we incorrectly applied the law or policy. Furthermore, he has not cited to any precedent legal decisions or authority sufficient to demonstrate that our prior decision was in error, or to establish that he derived U.S. citizenship from his mother under former section 321 of the Act. Accordingly, we find no basis for reconsideration of our previous decision.

ORDER: The motion to reconsider is denied.

Cite as *Matter of F-J-A-G-*, ID# 1512597 (AAO June 29, 2018)