U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

MATTER OF N-N-

DATE: APR. 26, 2019

APPEAL OF ANCHORAGE, ALASKA FIELD OFFICE DECISION

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

The Applicant, who was born in Thailand in 1982, seeks a Certificate of Citizenship reflecting that he derived U.S. citizenship after birth through his father. Immigration and Nationality Act (the Act) section 321, 8 U.S.C. § 1432, *repealed by* Sec. 103(a), title I, Child Citizenship Act of 2000, Pub.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). 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 established his paternity by legitimation.

The Director of the Anchorage, Alaska Field Office denied the Form N-600, concluding that only the Applicant's father became a naturalized U.S. citizen; and the Applicant did not demonstrate his divorced father had sole legal custody over him when he became a U.S. citizen or thereafter, and before the Applicant turned 18, as required.[1] On appeal, the Applicant submits additional evidence and claims that the record now demonstrates that all requirements have been satisfied.

Upon *de novo* review, we will remand the matter to the Director for further proceedings consistent with our opinion.

[1] The Applicant's Form N-600 was initially approved, then reopened pursuant to a U. S. Citizenship and Immigration Services motion to reopen, and subsequently denied. The Director correctly referred to former section 321 of the Act requirements in the motion to reopen and notice of intent to deny. The subsequent denial and the Applicant's appeal brief, however, erroneously cite to derivative citizenship requirements set forth at section 320 of the Act, 8 U.S.C. §1431. The Child Citizenship Act of 2000 (the CCA), which took effect on February 27, 2001, repealed section 321 of the Act and amended section 320 of the Act. The provisions of the CCA are not retroactive, and amended section 320 of the Act applies only to individuals who were not yet 18 on February 27, 2001. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). Because the Applicant was 18 in February 2001, he is not eligible for the benefits of the amended Act. The error does not affect our adjudication on appeal, though, since sole legal custody requirements are the same under both sections of the law, moreover, we are reviewing the matter *de novo*.

## I. LAW

The record reflects that the Applicant was born in Thailand on [redacted] 1982, to married foreign national parents. His parents obtained a divorce by mutual consent in Thailand in [redacted] 1989, and the Applicant was admitted into the United States as a lawful permanent resident in October 1996. The Applicant does not claim that his mother is a U.S. citizen. His father, however, became a naturalized U.S. citizen on December 3, 1999, and the Applicant seeks derivative U.S. citizenship through his father.

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 turned 18 in [redacted] 2000, when former section 321 of the Act was in effect. His derivative citizenship claim therefore falls under 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:
>
> (1) The naturalization of both parents; or
>
> (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.

(Emphasis added.) The U.S. Ninth Circuit Court of Appeals (the Court with binding jurisdiction over the Applicant's case) has interpreted the term "legal custody" for former section 321 of the Act purposes. *See U.S. v. Casasola*, 670 F.3d 1023, 1029-30 (9th Cir. 2012). Under this interpretation, the naturalized U.S. citizen parent must be granted "sole" legal custody over the child. A grant of "joint" legal custody is insufficient to satisfy the legal custody requirement in former section 321(a)(3) of the Act. *Id.*

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). The "preponderance of the evidence" standard requires that the record demonstrate the Applicant's claim is "probably true," based on the specific facts of his case. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (citing *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989)).

## II. ANALYSIS

The sole issue on appeal is whether the Applicant has established that his divorced father had sole legal custody over him between December 1999 (when his father became a U.S. citizen) and before the Applicant's 18th birthday (in [redacted] 2000), as required under the first clause in former section 321(a)(3) of the Act.[2]

It is undisputed that the Applicant's father was not awarded sole custody over him when the parents divorced in 1989, and the Applicant and his parents claim that it was the mother that obtained legal custody at that time. The Applicant asserts, nevertheless, that sole custody was transferred to his father in 1995, when his mother executed a letter of consent giving the father custody, and registered it with the District Office in [redacted] Thailand. To support his assertions, he submits a copy of his parents' divorce decree, affidavits from his parents, and a letter from an attorney in Thailand.

The record also contains a copy of a valid U.S. passport issued to the Applicant by the U.S. Department of State on December 28, 2010. The Director did not address this issue. We shall therefore remand the matter for the Director to consider the Applicant's claim anew.

**ORDER:** The decision of the Director is withdrawn. The matter is remanded for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

Cite as *Matter of N-N-*, ID# 1602571 (AAO Apr. 26, 2019)

[2] The Applicant does not claim eligibility under former sections 321(a)(1) or (a)(2) of the Act, and the record contains no evidence indicating that his mother became a naturalized U.S. citizen or that she is deceased.