U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF F-E-S-H-

DATE: DEC. 4, 2019

APPEAL OF RALEIGH-DURHAM, NORTH CAROLINA FIELD OFFICE DECISION

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

The Applicant seeks a Certificate of Citizenship to reflect that he derived U.S. citizenship from his father under former section 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432.[1]

The Director of the Raleigh-Durham, North Carolina Field Office denied the application, concluding that only the Applicant's father became a naturalized U.S. citizen before the Applicant turned 18; and the Applicant did not establish his parents married, legally separated, and his father obtained legal custody before the Applicant turned 18, as required under former section 321(a) of the Act.

The Applicant asserts on appeal that his parents had a common law marriage and divorce under Panamanian law, that he was in his father's custody after his parents divorced, and that he therefore meets former section 321(a)(3) of the Act legal separation and custody conditions.[2]

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

I. LAW

The record reflects that the Applicant was born in Panama on [redacted] 1966, to foreign national parents. His father became a U.S. citizen through naturalization in August 1973, and the Applicant was admitted into the United States as a lawful permanent resident in February 1977, at the age of 11. His mother became a U.S. citizen through naturalization in July 1996, when the Applicant was 30 years old. The Applicant is presently claiming derivative 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.

[1] Repealed by Sec. 103(a), title I, Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631 (2000).

[2] The Applicant also indicates that the denial of his Form N-600 violated his constitutional rights under the Equal Protection Clause of the 14th Amendment; however, he does not explain how his rights were violated. Moreover, we have no jurisdiction over constitutional due process or equal protection claims. *See generally, Matter of Fuentes-Campos,* 21 I&N Dec. 905, 912 (BIA 1997) (like the Board of Immigration Appeals, we do not have appellate jurisdiction over constitutional issues. "Faced with an unambiguous statutory mandate, our task is simple: we must apply the statute as written to the cases that come before us.") Accordingly, we will not address this issue.

2005). Based on the Applicant's year of birth in 1966, and the year when he turned 18 (1984), his derivative citizenship claim falls under the provisions of former section 321 of the Act.[3]

Former section 321 of the Act 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.

(Emphasis added.) 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 Applicant meets some of the requirements under former section 321(a) of the Act. Certificate of Naturalization evidence, for example, shows his father became a naturalized U.S. citizen in August 1973 when the Applicant was under the age of 18, as required by former section 321(a)(4) of the Act.

[3] The Child Citizenship Act of 2000 (the CCA), Pub. L. No. 106-395, 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 apply only to individuals who were not yet 18 years old as of February 27, 2001. Because the Applicant was over the age of 18 in February 2001, he is not eligible for the benefits of the amended Act. *See Matter of Rodriguez-Tejedor,* 23 I&N Dec. 153 (BIA 2001).

The Applicant was also admitted into the United States as a lawful permanent resident in 1977 when he was 11, as required in part under former section 321(a)(5) of the Act. The issue on appeal is whether the Applicant has demonstrated that he met the legal separation and custody requirements for derivative citizenship under former section 321(a)(3) of the Act.[4]

The Applicant asserts (through his attorney) that his 15-year-old mother began living with his father after she became pregnant; and that they lived together between August 1965 and February 1967, after which his mother left him with his father and moved to the United States. The Applicant refers to the Panama Constitution and the Family Code of Panama, and indicates that his parents' cohabitation was recognized as a common law marriage under the Panamanian law. He indicates further that his parents had a common law divorce in Panama, when they stopped living together and subsequently married other individuals. We find that the Applicant has provided insufficient evidence to establish his claims.

First, the Applicant's assertions, through counsel, regarding his parents' common law marriage and divorce are uncorroborated and do not constitute evidence. *See Matter of Obaigbena,* 19 I&N Dec. 533, 534 n.2 (BIA 1988) *(citing Matter of Ramirez-Sanchez,* 17 I&N Dec. 503, 506 (BIA 1980)) (counsel's statements must be substantiated in the record with independent evidence, which may include affidavits and declarations.) Here, although the record contains affidavits from the Applicant's parents, neither discusses or claims that they lived together in Panama, or that they had a common law marriage or divorce in Panama. The Applicant also provides no other evidence to demonstrate that his parents had a common law marriage or divorce in Panama. Because the Applicant provided no independent evidence to corroborate counsel's statements, they do not constitute evidence of his parent's common law marriage or divorce in Panama.

Second, because the Applicant has not established that his parents were in a common law marriage, he cannot establish that they legally separated for section 321(a)(3) of the Act purposes. *See Matter of H,* 3 I&N Dec. 742, 744 (BIA 1949). (The term "legal separation" in section 321(a)(3) of the Act, has been defined to presuppose a valid marriage; Parents who were not lawfully joined in wedlock could not have been legally separated.")

Third, even if the Applicant did establish that his parents were in a common law marriage (which he did not), he cites to no provision in the Panama Constitution or Family Code that allows individuals in common law marriages to obtain a legal separation by living apart and/or marrying another individual. Moreover, the term "legal separation" has been defined in the context of derivative citizenship to mean either a limited or absolute divorce obtained through judicial proceedings. *See Matter of H*, 3 I&N Dec. at 743, *supra*; *Johnson v. Whitehead*, 647 F.3d 120, 126 (4th Cir. 2011)(the term "legal separation" alone implies that there be some formal relationship, such as marriage, that can be ended only with legal action); *Matter of Mowrer*, 17 I&N Dec. 613 (BIA 1981)(a married

[4] The Applicant does not claim that he derived citizenship under former sections 321(a)(1) and (a)(2) of the Act, and the record does not demonstrate eligibility under either section. Although the record indicates that the Applicant's mother became a naturalized U.S. citizen, this did not occur until 1996, when the Applicant was over the age of 18. The record also does not reflect that his mother became deceased before the Applicant turned 18, as discussed under former section 321(a)(2) of the Act. In addition, the Applicant does not claim eligibility to derive citizenship through his mother pursuant to the out of wedlock provisions contained in the second clause of former section 321(a)(3) of the Act, and the record does not demonstrate eligibility under this section.

couple that simply lives apart with no plans of reconciliation is not "legally separated.") The Applicant has submitted no evidence to demonstrate that his parents obtained a legal separation through judicial proceedings. He therefore did not meet his burden of establishing that his parents legally separated in Panama.

Because the Applicant has provided insufficient evidence to establish that his parents married or obtained a legal separation, as required under former section 321(a)(3) of the Act, he has not established eligibility to derive citizenship through his U.S. citizen father under former section 321 of the Act. Accordingly, we find no purpose is served in analyzing whether his father had legal custody during the requisite time period, since this will not change the Applicant's ineligibility for derivative citizenship.

ORDER: The appeal is dismissed.

Cite as *Matter of F-E-S-H-*, ID# 5195186 (AAO Dec. 4, 2019)