U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22360098

Date: JULY 22, 2022

Appeal of Chicago, Illinois Field Office Decision

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 mother under section 301(g) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(g).

The Director of the Chicago, Illinois Field Office denied the Form N-600, concluding that the Applicant was not eligible for a Certificate of Citizenship under section 301(g) of the Act because he did not show that his mother had been physically present in the United States for at least five years prior to the Applicant's birth in 2001, no less than two of which were after the age of 14 years. The Director also concluded that the Applicant was not eligible for a Certificate of Citizenship under section 320 of the Act because he had not shown that he had resided in his mother's legal and physical custody pursuant to his admission into the United States as a lawful permanent resident at some point before the Applicant turned 18 years of age in February 2020, as required.

On appeal, the Applicant claims that the Director applied requirements to the Applicant that are not part of the statute at section 320 of the Act and contends that he is eligible for a Certificate of Citizenship based on equitable estoppel. He does not contest the Director's separate conclusion that he does not meet the eligibility conditions for a Certificate of Citizenship under section 301(g) of the Act; therefore, we will not address this issue on appeal.

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

I. LAW

The Applicant was born in Mexico in [redacted] 2001 to married parents. His mother's birth certificate and U.S. passport reflect that she is a U.S. citizen by birth. The Applicant does not claim or provide evidence to show that his father is U.S. citizen; therefore, he seeks to show that he derived U.S. citizenship solely through the mother. The Applicant was admitted to the United States as a lawful permanent resident in June 2021 at the age of 20 years.

The applicable law for transmitting citizenship to a child born abroad when one parent is a U.S. citizen is the statute that was in effect at the time of the child's birth. *See Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1029 n.3 (9th Cir. 2001) (internal quotation marks and citation

omitted). Here, section 320 of the Act, as amended by the Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631 (CCA), applies to the Applicant's derivative citizenship claim, as he was under the age of 18 years when the CCA was enacted on February 27, 2001.[1] This section provides, in pertinent part, that:

> (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 eighteen 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.

Moreover, the Applicant must meet the definition of a "child" in section 101(c)(1) of the Act, 8 U.S.C. § 1101(c)(1), which requires, in pertinent part, that during the relevant timeframe:

> The term "child" means an unmarried person under twenty-one years of age and includes a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in the United States or elsewhere . . . if such legitimation . . . takes place before the child reaches the age of 16 years . . . and the child is in the legal custody of the legitimating . . . parent or parents at the time of such legitimation . . . .

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. *Matter of Baires*, 24 I&N Dec. 467, 468 (BIA 2008). Under the preponderance of the evidence standard, the Applicant must demonstrate that his claim is "probably true," or "more likely than not." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

II. ANALYSIS

The Applicant has satisfied the conditions in sections 320(a)(1) of the Act, as his Mexican birth certificate and his mother's 1978 California birth certificate and her U.S. passport show that he was born outside of the United States to a parent who is a U.S. citizen at birth. The Applicant also meets the definition of a child under the relevant section 101(c)(1) of the Act provisions in that there are no indications he is married. The remaining issues are whether the Applicant has shown that he was residing in his mother's legal and physical custody sometime after his admission to the United States as a lawful permanent resident and before turning 18 years of age in [redacted] 2020. In this case, the Applicant's lawful permanent resident card shows that he was not admitted to the United States as a

[1] The amended provisions of sections 320 of the Act apply to individuals, such as the Applicant, who were not yet 18 years old as of February 27, 2001.

lawful permanent resident until June 2021, when he was over the age of 18 years. Consequently, we conclude that the Applicant has not demonstrated that he meets the lawful admission while under the age of 18 years conditions for derivative citizenship at section 320(a)(2) and (3) of the Act. Moreover, we find that for purposes of this decision it is unnecessary for us to determine whether the Applicant has separately met the section 320(a)(3) of the Act residing in the U.S. citizen parent's legal and physical custody conditions because he first must show he was admitted to the United States as a lawful permanent resident while he was under the age of 18 years.[2]

The record before the Director shows that the Applicant was admitted to the United States as a lawful permanent resident in June 2021, when the Applicant was over the age of 18 years, and the Director therefore concluded that the Applicant was statutorily ineligible for a Certificate of Citizenship under conditions at section 320(a) of the Act.

On appeal, the Applicant does not contest the Director's conclusion that the Applicant was over the age of 18 years when he was admitted into the United States as a lawful permanent resident. Instead, he asserts that the statute is silent as to whether or not the Applicant must have been under the age of 18 years to establish eligibility for a Certificate of Citizenship. However, section 320 of the Act provides that an applicant born outside of the United States automatically becomes a U.S. citizen when *all* of the statutory conditions are fulfilled, which includes the section 320(a)(2) of the Act requirement that the child be under the age of 18 years when the conditions are met. *See*, *e.g.*, *Al Said v. U.S. Embassy in Djibouti,* 544 F. Supp. 3d 289, 295 (E.D.N.Y. June, 18, 2021) (citing *Moreira v. Sessions*, 681 Fed.Appx. 61, 63 (2d Cir. 2017) (concluding that "a pending application for lawful permanent resident status insufficient" to satisfy the statutory requirement that the child have held lawful permanent resident status before turning 18 years of age)). Consequently, the statute is not silent on the age-related provisions of section 320 of the Act.

The Applicant also claims on appeal that his mother submitted a Form I-130, Petition for Alien Relative, on his behalf when he was 17 years old but that he was unable to enter the United States as a lawful permanent resident while under the age of 18 years because U.S. Citizenship and Immigration Services (USCIS) did not approve the Form I-130 until he was over the age of 18 years.[3] The Applicant suggests that USCIS processing delays in adjudication of the Form I-130 caused his admission to the United States to be delayed until after the age of 18 years, citing to *Poole v. Mukasey*, 522 F.3d 259 (2d Cir. 2008) and *Harriott v. Ashcroft*, 277 F. Supp. 2d 538 (July 1, 2003). The Applicant appears to be suggesting that his application should be granted U.S. citizenship *nunc pro tunc* under the doctrine of equitable estoppel based on the claimed I-130 processing delays.

Like the Board of Immigration Appeals, we do not have authority to apply the doctrine of equitable estoppel against a component part of USCIS, including the Chicago, Illinois Field Office that denied the Form N-600. *See Matter of Hernandez-Puente*, 20 I&N Dec. 335, 338 (BIA 1991). Our jurisdiction is limited to that authority specifically granted by the Secretary of the Department of

[2] We reserve these issues. Our reservation of the issues is not a stipulation that the Applicant has overcome these additional possibilities for denial, and should not be construed as such. Rather, there is no constructive purpose to addressing the additional grounds here, because as shown below, they would not change the outcome of the appeal.

[3] The Applicant has not shown that there were in fact delays in processing of the Form I-130, as USCIS records show that the Form I-130 was filed in October 2018, approximately three and one-half months before his 18th birthday, and approved in February 2019.

Homeland Security. *See* DHS Delegation Number 0150.1 (effective March 1, 2003); *see also* 8 C.F.R. § 2.1 (2004). The jurisdiction of the AAO is limited to those matters described at 8 C.F.R. § 103.1(f)(3)(E)(iii) (as in effect on February 28, 2003). Accordingly, the AAO has no authority to address the Applicant's equitable estoppel claim.

We are bound by the Act, agency regulations, precedent decisions of the agency, and published decisions from the circuit court of appeals where the action arose. *See N.L.R.B. v. Ashkenazy Properly Management Corp.*, 817 F.2d 74, 75 (9th Cir. 1987). The Applicant's proceedings fall within the jurisdiction of the Seventh Circuit, whereas the Circuit Court decision in *Poole v. Mukasey* was issued by the U.S. Court of Appeals for the Second Circuit. In that case, an individual alleged that he lost eligibility to derive citizenship due to the DHS's delay of his mother's naturalization. His equitable estoppel claim was ultimately dismissed as there was "no evidence that the delay in processing [the] mother's naturalization application was 'untoward' or that [the] mother took any action to expedite the application in light of the petitioner's age." *See Poole v. Holder*, 363 Fed. Appx. 82, 83 (2d Cir. 2010).

In addition, we are not bound to follow the published decisions of a federal district court even in cases arising within the same circuit or district. Although we may consider the reasoning underlying a district judge's decision, the decision is not binding on us as a matter of law. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). We find that *Harriott v. Ashcroft* is not applicable to the matter before us. In that case, the District Court found, in part, that the delay in adjudication of a Form N-600K filed under section 322 of the Act, 8 U.S.C. § 1433, violated the INS internal guidelines requiring expedited processing and eligibility determinations for all cases involving children approaching 18 years of age. The District Court estopped INS from denying the application and ordered INS to approve it *nunc pro tunc*. Here, the Applicant does not assert delay in adjudication of his Form N-600, but rather a delay in processing of the Form I-130 that his mother had previously filed on his behalf, a matter that is not before us.

The requirements for citizenship, as set forth in the Act, are statutorily mandated by Congress and USCIS does not have authority to issue a Certificate of Citizenship to an applicant who does not meet those statutory requirements. A person may only obtain citizenship in strict compliance with the statutory requirements imposed by *Congress. INS v. Pangilinan*, 486 U.S. 875, 885 (1988).

In this case, because the Applicant was admitted to the United States as a lawful permanent resident after the age of 18 years, he has not demonstrated that he resided in the United States in his U.S. citizen mother's physical and legal custody at some point before he turned 18 years of age in [redacted] 2020, as required by sections 320(a)(2) and (3) of the Act. Accordingly, he has not established that he derived U.S. citizenship through his mother under section 320 of the Act.

ORDER: The appeal is dismissed.