U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 18350474

Date: APR. 27, 2023

Motion on Administrative Appeals 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 U.S. citizen mother under former section 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432.

The Director of the Reno, Nevada Field Office denied the application, concluding in pertinent part that the Applicant did not derive citizenship solely through his U.S. citizen mother as a child born out of wedlock without legitimation pursuant to former section 321(a)(3) of the Act. We dismissed the Applicant's appeal, determining that he had not satisfied the former section 321(a)(3) of the Act out of wedlock condition and, as a consequence, did not derive U.S. citizenship through his naturalized U.S. citizen mother. We incorporate that decision here by reference. The Applicant has filed a combined motion to reopen and reconsider. On motion, we issued the Applicant a Notice of Intent to Dismiss (NOID), and he has responded by reasserting his eligibility, but does not include additional evidence.

The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, we will dismiss the motions.

I. LAW

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). 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). We may grant a motion that meets these requirements and establishes eligibility for the benefit sought.

The record reflects that the Applicant was born in Mexico in [redacted] 1980 to noncitizen parents. The Applicant adjusted his status to that of a lawful permanent resident within the United States in October 1989, at the age of 8 years. His mother became a U.S. citizen through naturalization in June

1994. The Applicant did not claim or provide evidence that his father is a U.S. citizen, instead claiming derivative citizenship solely through his mother.

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). Based on the Applicant's year of birth in 1980 and the year when he turned 18 (1998), his derivative citizenship claim falls under the provisions of former section 321 of the Act.

In this case, the Applicant claims to have established eligibility to derive citizenship solely through his mother pursuant to the second clause of former section 321(a)(3) of the Act, which provides that an out of wedlock child may derive citizenship through the naturalization of his mother if, among other requirements, the paternity of the child has not been established by 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. *See Matter of Baires,* 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. at 376.

III. ANALYSIS

The Applicant asserts that his parents never married each other and that his father never legitimated him and therefore he has satisfied the former section 321(a)(3) of the Act out of wedlock without legitimation conditions for a Certificate of Citizenship. He provided evidence below and on appeal intended to show that his parents were never married, but as stated, we determined on appeal that the Applicant had not established that he was born out of wedlock. The Applicant filed this motion with new evidence to address the discrepancies in the record noted in our prior decision with regards to whether or not his parents were ever married to each other. However, U.S. Citizenship and Immigration Services (USCIS) has obtained a copy of the Petitioner's original, long-form 1981 birth registration from the Civil Registry Office in the State of [redacted] Mexico. According to the 1981 birth registration, when the Applicant's father registered his birth, the father claimed that he was married, stated that the Applicant was his legitimate son, and specified that the Applicant's mother was his spouse. We advised the Applicant of the derogatory information in a NOID and provided him a copy of the original registration. 8 C.F.R. § 103.2(b)(16)(i). The Applicant timely responded to the NOID, maintaining that he meets the conditions of former section 321(a)(3) of the Act through his naturalized U.S. citizen mother because he was born out of wedlock and was not legitimated by his father.

A. Out of Wedlock Conditions

As discussed in our prior decision, the Applicant claimed on his Form N-600 that he was born out of wedlock, that his parents never married, and that he was never legitimated. As evidence that his parents were not married, as he claimed, the Applicant initially provided a 2019 abstract of his Mexican birth certificate that did not reflect the marital status of his parents and a 2019 statement from his mother, who claimed that she had never married the Applicant's father. The Director denied the Form N-600, finding that he had not established that he was born out of wedlock. On appeal, the Applicant provided two Certificates of Non-Existence of Marriage Registration from Mexico, each indicating that a search for a

record of marriage registration for the Applicant's parents did not reveal such a record. However, we dismissed the appeal, concluding that the Applicant's evidence did not contain sufficient information to show that he was born out of wedlock because the results of one certificate were based on an incorrect date of birth for the Applicant's father, and both certificates were based on local searches with qualifying language indicating that there may be marriage registry information in other locations and for other periods of time.

On motion, the Applicant claims that our appellate decision was based on an incorrect application of law because his previously provided documents are sufficient to establish by a preponderance of the evidence that his mother was not married to his father when the Applicant was born. He asserts that regardless of the date of birth error in his father's Certificate of Non-Existence of Marriage Registration, the corresponding record for his mother was sufficient to satisfy his burden in these proceedings to establish that his mother had never been married, including to his father. On motion, he also now submits evidence in the form of new Certificates of No Marriage Record from [redacted] and from the National Database of the Civil Registry of Mexico for each parent, various immigration-related documents that his mother had filed once she was in the United States and in which she stated that she was single, and a 1981 California income tax return that she had filed as head of household, not claiming to be married.

However, as stated in our NOID, a copy of the Applicant's original 1981 birth registration obtained directly from the Civil Registry Office in [redacted], Mexico reflects that his father registered the Applicant's birth, claimed to be married to the Applicant's mother at the time and acknowledged paternity, directly contradicting the Applicant's new evidence. In response to our NOID, the Applicant submits no additional evidence, instead asserting that the previously submitted evidence is sufficient to show that his parents never married each other. The Applicant also contends that for USCIS to favor the marital claims reflected in his 1981 birth registration over the Applicant's other evidence indicating that there is no evidence of the marriage is legal error. Although he asserts that his parents were never married to each other and that his father's claims before the Civil Registry Officer in 1981 were erroneous, he has not provided evidence to show that his father had misrepresented his own marital status when registering the Applicant's birth or that there was a clerical error as he also suggests. Moreover, the father's 1981 statements on the birth registration are contemporaneous information regarding the Applicant's birth status, whereas much of the Applicant's evidence regarding their marital status at the time of his birth in [redacted] 1980, including his mother's 2019 statement and the Certificates of No Marriage Record, was generated nearly 40 years later, and therefore does not carry the same weight. *Cf. Matter of Lugo-Guadiana*, 12 I&N Dec. 726, 729 (BIA 1968) (concluding that the same evidentiary weight does not attach to a delayed birth certificate as would attach to one contemporaneous with the actual event). Although the Applicant asserts that USCIS should not rely on the information in his 1981 birth registration, it is the Applicant's burden to establish the claimed citizenship by a preponderance of the evidence. *See Matter of Baires,* 24 I&N Dec. at 468. In this case, the evidence that the Applicant has provided on motion does not contain sufficient information to show that his parents were not married to each other at the time of his birth in 1980, as he claims.

B. Legitimation Conditions

In the alternate, even if the Applicant had established that he was born out of wedlock, he has not shown that he was not legitimated as required by former section 321(a)(3) of the Act.

The Board of Immigration Appeals (the Board) has interpreted the concept of legitimation as the act of placing a child born out of wedlock in the same legal position as a child born in wedlock, and has held that "where a jurisdiction requires an affirmative act to legitimate an out of wedlock child, paternity is not established without the requisite act even if the jurisdiction has enacted a law to place children on equal footing without regard to the circumstances of their birth." *Matter of Cross*, 26 I&N Dec. 485, 490 (BIA 2015). In *Matter of Cross*, the Board affirmed, in part, its prior holdings in *Matter of Hines*, 24 I&N Dec. 544 (BIA 2008) and *Matter of Rowe*, 23 I&N Dec. 962 (BIA 2006), with regard to legitimation in Guyana and Jamaica in the context of derivative citizenship proceedings under former section 321(a)(3) of the Act. In those cases, the Board found that although both countries had enacted laws that effectively eliminated legal distinctions between children born in wedlock and those born out of wedlock, they retained a formal means of legitimating through the marriage of the biological parents. Because the parents in *Hines* and *Rowe* did not marry, the Board found that the paternity of the respondents had not been established by legitimation and they could therefore derive citizenship from the naturalization of their mothers under former section 321(a)(3) of the Act. *Cross*, 26 I&N Dec. at 490. Thus, in this case, if the Applicant had shown that he was born out of wedlock, then whether the Applicant was "legitimated" by his father under the laws of Mexico for purposes of former section 321(a)(3) of the Act prior to reaching the age of 18 years depends on whether during that period he was afforded the same rights with regard to his father as children who were born in wedlock, and whether his father took any affirmative action required for legitimation in Mexico.

In denying the application, the Director referred to the steps required under the Civil Code of [redacted] for implementation of the rights of a child born out of wedlock in Mexico. These steps are discussed in a report from the Law Library of Congress[1] indicating that under the provisions of the Civil Code of [redacted] Mexico,[2] as amended on February 25, 1995, the rights of a child born outside of a marital union are implemented (and the child is thus legitimated) when parentage is established by the parent's voluntary acknowledgment of the child or by a final judgment declaring the paternity of the child. Acknowledgment may be achieved by any of the following ways: 1) on the birth record, before the Civil Registry Officer; 2) by a special acknowledgment proceeding before the Civil Registry Officer; 3) by a public notarial instrument; 4) under a will; or 5) by direct and open admission in court.

In this case, the Applicant's 1981 birth registration record, a copy of which we provided to him in our NOID, not only names the Applicant's father, but also appears to specify that the father appeared before the Officer of the Civil Registry in [redacted] Mexico in January 1981, stated that the Applicant was his legitimate son, and registered the Applicant's [redacted] 1980 birth. These actions by the Applicant's father indicate his voluntary acknowledgement of paternity as required under the Civil Code of [redacted] Mexico, as amended in 1995 and establish that the Applicant was legitimated. Consequently, even if the Applicant's evidence had contained sufficient information to establish that

[1] [redacted] *Mexico: State Law on Legitimation and Distinctions Between Children Born In and Out of Wedlock*, LL File No. 2021-019989, Prepared in August 2017.

[2] *See generally Código Civil del Estado de* [redacted], Feb. 25, 1995, available at https://congresoweb.congresojal.gob.mx/BibliotecaVirtual/busquedasleyes/Listado.cfm#Leyes.

he was born out of wedlock, as he claims, he has not shown that he then satisfies the separate out of wedlock *without legitimation* condition for derivative citizenship at former section 321(a)(3) of the Act.

IV. CONCLUSION

We previously concluded that the Applicant did not establish derivative citizenship through his naturalized U.S. citizen mother under former section 321(a)(3) of the Act, because he did not show that he was born out of wedlock. The Applicant has not identified legal or USCIS policy errors in our previous decision and the new evidence he provides on motion does not overcome the evidence in the record indicating that his parents were married at the time of his birth. In the alternate, even if the evidence had shown that he was born in wedlock, he still does not satisfy the requirements for derivative citizenship under former section 321(a)(3) of the Act as he has not overcome evidence indicating that he was legitimated by his noncitizen father. Consequently, reopening of these proceedings and reconsideration of our prior adverse decision is not warranted and his application for a Certificate of Citizenship remains denied.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.