U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25213343

Date: MARCH 29, 2023

Appeal of Hialeah, Florida Field Office Decision

Form N-600, Application for a Certificate of Citizenship

The Applicant seeks a Certificate of Citizenship to reflect that he derived U.S. citizenship solely from his mother under former section 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432.[1] To establish derivative citizenship under that section of the Act individual born abroad to noncitizen parents must show, in relevant part they met specific statutory criteria to derive citizenship from only one naturalized parent.

The Director of the Hialeah, Florida Field Office denied the Form N-600, concluding that the Applicant did not establish he met the requirements to derive citizenship solely from his mother as her out-of-wedlock child because he was legitimated by his father in Jamaica when his parents married.[2] The matter is now before us on appeal.

On appeal, the Applicant submits additional evidence and asserts that his parents' marriage did not serve to legitimate him under Jamaican law and the Director's adverse decision was therefore in error.

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). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

The record reflects that the Applicant was born in [redacted] 1977 in Jamaica to unmarried noncitizen parents. His mother timely registered the birth, but the name of the Applicant's father was not included in his birth certificate. The record further shows that in [redacted] 1979, the Applicant's mother married K-V-L-,[3] who subsequently petitioned for her to immigrate to the United States as his spouse. In May

[1] Repealed by Sec. 103(a), title I, Child Citizenship Act of 2000 (CCA), Pub.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

[2] The Director also found the Applicant ineligible to derive citizenship under current section 320 of the Act, 8 U.S.C. § 1431, as amended by the CCA because he was over the age of 18 years when the amendment took effect. The Applicant does not dispute this finding on appeal. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001) (Current section 320 of the Act applies only to individuals who were not yet 18 years old as of February 27, 2001, its effective date)

[3] We use initials to protect the individual's privacy.

1988, at the age of 10 years the Applicant was admitted to the United States with his mother as her dependent child in a preference immigrant classification (P-23). The mother naturalized as a U.S. citizen in April 1995, shortly before the Applicant's 18th birthday. Her marriage to K-V-L- was dissolved through divorce in [redacted] 1996 when the Applicant was over 18 years old. As stated, the Applicant is claiming derivative citizenship solely through his mother, and there is no evidence that K-L-V- is or was a U.S. citizen at any time.

To determine whether the Applicant derived U.S. citizenship from his mother, we apply "the law in effect when the last material condition for derivative citizenship was met." *Levy v. U.S. Attorney General*, 882 F. 3d 1364, 1366 n. 1 (11th Cir. , when the Applicant was over 18 years old). Here, the last "material condition" satisfied before the Applicant's 18th birthday is his mother's 1995 naturalization, when former section 321 was in effect. Former section 321 of the Act provided in relevant part that:

> (a) A child born outside of the United States of alien parents . . . becomes a citizen of the United States upon fulfillment of the following conditions:
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> . . .
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> (3) . . . 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
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> (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.

Because the Applicant was born abroad, he is presumed to be a noncitizen and bears the burden of establishing his claim to U.S. citizenship by a preponderance of credible evidence. *Matter of Baires-Larios*, 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. at 376.

II. ANALYSIS

There is no dispute that the Applicant was born out of wedlock, and that he was under the age of 18 years when he became a lawful permanent resident and when his mother naturalized as a U.S. citizen. The Applicant therefore meets the conditions in former sections 321(a)(4) and (5) of the Act. The contested issue is whether the Applicant has met his burden of proof to show that his "paternity . . . has not been established by legitimation," as required to derive citizenship solely from his mother under former section 321(a)(3) of the Act. Upon review of the entire record as supplemented on appeal, we conclude that the Applicant has not demonstrated he satisfied this requirement.

In denying the Applicant's citizenship claim, the Director determined that the preponderance of the evidence in the record, which included the information on the Applicant's immigrant visa and supporting documents, as well as the parents' marriage certificate indicated that the Applicant's paternity was established by legitimation under Jamaican law, despite the non-inclusion of the father's name in the Applicant's birth certificate. In making this determination, the Director relied on *Matter of Clahar*, 16 I&N Dec. 484, 488 (BIA 1978),[4] holding that under the Jamaican Legitimation Act of 1909, a child born before the parents' marriage is considered their legitimate child from the date of the marriage and is entitled to all rights of a legitimate child. The Director further concluded that because the Applicant did not provide his parents' complete divorce decree as requested, the information was insufficient to determine whether the issue of his paternity was addressed in the divorce proceedings, and whether the court any made any findings concerning his paternity.

The Applicant asserts that although his mother and K-V-L- married, there is no evidence that K-L-V- is his biological father and that the marriage alone does not prove he was legitimated under Jamaican law within the meaning of former section 321(a)(3) of the Act. He avers that although he was unable to provide a certified copy of his mother's 1996 divorce because the case file was destroyed in accordance with Florida law, he has nevertheless demonstrated that the Director improperly relied on his immigrant visa-related documents in concluding that they pointed to K-L-V-'s paternity.

The Board of Immigration Appeals (the Board) interpreted the phrase "paternity . . . has not been established by legitimation" in former section 321(a)(3) of the Act to mean 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).

Thus, to prevail on his citizenship claim the Applicant must show that his paternity *has not* been established by legitimation in a state or country where he or his father was domiciled before the Applicant turned 18 years of age.[5] Here, the record reflects that the Applicant lived in Jamaica until he was 10 years old and that he thereafter resided in Florida with his mother and K-L-V-, who were married to each other. The record also shows that K-L-V- resided in Jamaica until he immigrated to the United States in October 1979, shortly after marrying the Applicant's mother. The Applicant therefore must demonstrate that his paternity was not established by legitimation in both Jamaica and Florida before he turned 18 years old.

As stated, the Applicant claims he was not legitimated by K-V-L- in Jamaica because there is no evidence that K-V-L- is his natural father. In support, he references *Miranda v. Sessions*, 853 F.3d. 69 (1st Cir. 2017) (holding that an individual did not derive U.S. citizenship from his mother under former section 321(a)(3) of the Act because his paternity was established by legitimation under the

[4] Modified by *Matter of Clahar*, 18I&N Dec. 1, 2 (BIA 1981) (holding that a child within the scope of the Jamaican Status of Children Act may be included within the definition of a legitimate or legitimated "child" set forth in section 101(b)(1) of the Immigration and Nationality Act so long as the familial tie or ties are established by the requisite degree of proof and the status arose within the time requirements set forth in section 101(b)(1) of the Act).

[5] Unless otherwise specified, the law of the child's residence or domicile, or the law of the father's residence or domicile, is the relevant law to determine whether a child has been legitimated. *See* 12 *USCIS Policy Manual* H.2(B), https://www.uscis.gov/policy-manual.

laws of Angola, Massachusetts, and Cape Verde), as well as the Board's precedent decision in *Matter of Cross*, 26 I&N Dec. at 492-93 (holding that an individual born out of wedlock in Jamaica after the 1976 effective date of the Jamaican Status of Children Act qualified as his father's legitimated "child" within the meaning of sections 101(c)(1) and 320 of the Act). He points out that in both those cases the fathers signed the individuals' birth certificates acknowledging paternity, while his birth certificate does not include the name of his father.

We acknowledge the Applicant's statements, but conclude that they are not sufficient to show that his paternity was not established by legitimation under Jamaican law.

According to a 2015 opinion from the Law Library of Congress, Global Research Center (LOC opinion), attached,[6] although the Jamaican Status of Children Act of 1976 (JSCA) eliminated all legal distinctions between "legitimate" and "illegitimate" children and provided a mechanism by which the father of a child born out of wedlock could acknowledge paternity, the Jamaican Legitimation Act of 1909 (Legitimation Act) appears to remain in force. The Legitimation Act provides in relevant part that "any child born before the marriage of his or her parents whose parents have intermarried or shall hereafter intermarry shall be deemed on the marriage of such parents to have been legitimated as from the date of such marriage and shall be entitled to all the rights of a child born in wedlock." Thus, the marriage of the parents alone appears to be sufficient to legitimate an out-of-wedlock child in Jamaica. *Id.* The legitimation of a child by the parents' marriage, however, will generally not be recognized if at the time of the child's birth there existed any legal impediment to the marriage of the parents of the child. *Id.* In addition to the legitimation of a child by the subsequent valid marriage of the parents, filiation for the purposes of JSCA may be established by documents, including certified copies of entries from the register of births, and declaratory judgments. *Id.*

We acknowledge that pursuant to the provisions of JSCA an out out-of-wedlock child must be recognized by the natural father to qualify as the father's "legitimated" child defined in section 101(b)(1) of the Act (for immigrant visa purposes) and section 101(c)(1) of the Act (for purposes of derivative citizenship under section 320 of the Act). *See Matter of Clahar*, 18 I&N Dec. 1 at 2; *Matter of Cross* at 492-93. However, the interpretation of "legitimation" for purposes of the definitions of a "child" in sections 101(b)(1) and (c)(1) of the Act does not extend to "paternity . . . established by legitimation" for purposes of former section 321(a)(3). *Matter of Cross* at 491.

The application of the foreign law is a question of fact, which must be proved by the applicant. *Matter of Kodwo,* 24 I&N Dec. 479, 482 (BIA 2008). Here, the preponderance of the evidence indicates that the Applicant's paternity was established by legitimation in 1979 pursuant to the Jamaican Legitimation Act when K-V-L- married the Applicant's mother. The Applicant has not pointed to any provisions in the Legitimation Act indicating that a child's natural father must acknowledge paternity of the child, or that the paternity must be otherwise established for the legitimation through marriage to be effective. Nor does the Applicant claim that there existed any impediment to his parents' marriage at the time he was born, such that his legitimation would not be recognized under Jamaican law. The Applicant therefore has not shown that his "paternity ha[d] not been established by

[6] Report for U.S. Citizenship and Immigration Services, *Jamaica: Legitimation and Recognition of Children*, LL File No. 2015-011740.

legitimation" under Jamaican law despite K-V-L-'s and his mother's marriage in that country when he was two years old.

We note that even if the Applicant had demonstrated that establishing paternity was required for legitimation through marriage under the Jamaican Legitimation Act (which he did not), the preponderance of the evidence in the record is sufficient to show that K-V-L- is "more likely than not" the Applicant's biological father. The Applicant avers, and we agree that the mere fact he was admitted to the United States based on the immigrant visa petition K-V-L- filed on his mother's behalf does not in itself prove that K-L-V- is his biological father. However, as discussed in the Director's decision, the Applicant's mother confirmed under oath in the Applicant's immigrant visa proceedings that K-V-L- was in fact his father, and that the Applicant's purpose in immigrating to the United States was to join K-V-L- in Florida. The Applicant has not provided any documents to show that K-V-L- contested paternity at any time, that he was determined not to be the Applicant's biological father in judicial or administrative proceedings in either Jamaica or in the United States, or that he is otherwise excluded as the Applicant's natural parent.

In view of the above, we conclude that the Applicant has not demonstrated his "paternity ha[d] not been established by legitimation" under the law of his and his father's domicile in Jamaica before he immigrated to the United States in 1988. Consequently, the Applicant has not met his burden of proof that he derived U.S. citizenship from his mother under former section 321(a)(3) of the Act.[7]

III. CONCLUSION

The Applicant has not established he derived U.S. citizenship from his mother as her out-of-wedlock child because he has not shown, as required that his paternity had not been established by legitimation during the relevant period before he turned 18 years old. The Applicant is therefore ineligible for a Certificate of Citizenship, and his Form N-600 remains denied.

ORDER: The appeal is dismissed.

ATTACHMENT: Report for U.S. Citizenship and Immigration Services, *Jamaica: Legitimation and Recognition of Children*, LL File No. 2015-011740.

[7] The Applicant does not address whether his paternity may have been established by legitimation in Florida, where he resided with his mother and K-V-L- after 1988 and before turning 18 years of age in [redacted] 1995. However, as the Applicant's legitimation in Jamaica is dispositive of his citizenship claim, we need not determine at this time whether he was legitimated under Florida law and reserve the issue. *See I.N.S. v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("As a general rule courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach.").