U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28019419

Date: SEP. 8, 2023

Appeal of Indianapolis, Indiana Field Office Decision

Form N-600, Application for a Certificate of Citizenship

The Applicant seeks a Certificate of Citizenship to reflect that she derived U.S. citizenship from a U.S. citizen parent under section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The Director of the Indianapolis, Indiana Field Office denied the Form N-600, Application for Certificate of Citizenship (Form N-600), concluding that the Applicant did not provide a birth certificate as proof of the relationship with her U.S. citizen parent, as required. The matter is now before us on appeal. 8 C.F.R. § 103.3.

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 admitted to the United States as a child of refugee (RE-3) in August 2013. The information on the related immigration forms indicates that the Applicant was born in Burma (Myanmar) in [redacted]2005, but it does not include the names of her parents. In 2015, when the Applicant was nine years old her status was adjusted to that of a lawful permanent resident (LPR) retroactive to the date she was initially admitted to the United States as a refugee. She filed the instant Form N-600 based on a claim that she derived U.S. citizenship upon her mother's naturalization in April 2021.

In adjudicating the Applicant's derivative citizenship claim, we apply "the law in effect at the time the critical events giving rise to eligibility occurred." *Minasyan v. Gonzales*, 401 F.3d 1069, 1075 (9th Cir. 2005). Because the Applicant is currently under the age of 18 years, section 320 of the Act, as in effect since 2001, governs her derivative citizenship claim. Section 320 of the Act 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.

The term "child" for the purposes of derivative citizenship under section 320 of the Act includes, in relevant part, biological children born in wedlock, as well as out-of-wedlock children legitimated while under the age of 16 years. Section 101(c) of the Act, 8 U.S.C. § 1101(c).

The regulation at 8 C.F.R. § 320.1 defines the term "legal custody" in section 320(a)(3) of the Act as "responsibility for and authority over a child." That regulation provides that U.S. Citizenship and Immigration Services (USCIS) will presume that a U.S. citizen parent has legal custody of a child, and will recognize that U.S. citizen parent as having lawful authority over the child, absent evidence to the contrary, in the case of a biological child who resides with both natural parents who are married to each other, living in marital union, and not separated. 8 C.F.R. § 320.1(1)(i). There may also be other factual circumstances under which USCIS will find the U.S. citizen parent to have legal custody for purposes of section 320 of the Act. 8 C.F.R. § 320.1(2).

Because the Applicant was born abroad, she is presumed to be a noncitizen and bears the burden of establishing her claim to U.S. citizenship by a preponderance of credible evidence. *Matter of Baires-Larios*, 24 I&N Dec. 467, 468 (BIA 2008).

III. ANALYSIS

The issue on appeal is whether the Applicant submitted sufficient evidence to establish the requisite biological relationship with the naturalized U.S. citizen through whom she is claiming derivative citizenship.[1]

As stated, the names of the Applicant's parents are not listed on the refugee documents with which she was admitted to the United States in 2013. While the parents' names are listed on the Applicant's adjustment of status application and accompanying Form G-325A, Biographic Information, the record of adjustment proceedings does not include her birth certificate. The Applicant listed the same parents' names on the instant Form N-600 indicating that they were married in 1994, but she did not submit her birth certificate or the parents' marriage certificate to support these representations.

To establish eligibility for a Certificate of Citizenship, applicants must submit, in part, their birth certificate or record unless such evidence is already contained in USCIS administrative file(s). 8 C.F.R. § 320.3. Because this document was not contained in the Applicant's administrative file, the

[1] We note that the record also does not include evidence to demonstrate that the naturalized U.S. citizen through whom the Applicant is claiming derivative citizenship has the requisite legal and physical custody of her. Because the Applicant is claiming derivative citizenship through her mother, she does not necessarily have to establish that she was born in wedlock. Nevertheless, evidence of the parents' marriage is relevant to a determination whether her mother meets the legal custody presumption under section 320(a)(3) of the Act.

Director issued a request for evidence (RFE) asking the Applicant to submit her birth certificate or record. As stated, the Applicant did not submit the requested evidence, and the Director denied the Form N-600 on that basis.

On appeal, the Applicant asserts that she was not issued a birth certificate in Burma due to the practices where she was born and the circumstances of her birth. She indicates that this is common in Burma and "only those people born in large cities and whose parents have money to file for a birth certificate, have one." The Applicant further contends that she was informed by a friend that she could submit her United Nations High Commissioner for Refugees (UNHCR) household registration document as evidence, which she submits on appeal. She further indicates that USCIS never questioned her or her mother when they listed each other on previous immigration applications.

In lieu of her birth certificate, the Applicant submits a UNHCR Household Registration Document that lists six individuals claiming to be in the same "household." According to the UNHCR Handbook for Registration, a "household" is comprised of persons who normally reside together or are living together in the territory of asylum and may include blood relatives, in-laws, and people who may not have a specific blood relation to the other members of the group. *See* UNHCR, *Handbook for Registration*, https://www.refworld.org/pdfid/3f967dc14.pdf. Presumably, the information obtained by the UNHCR and used to create the Household Registration Document is based solely on the individuals' claims regarding identity and familial relationships, which is not sufficient to establish the parent-child relationship for deriving U.S. citizenship. Here, although this document lists the Applicant and the naturalized U.S. citizen through whom she is claiming derivative citizenship within the same "household," it does not establish their parent-child relationship.

We have considered the Applicant's statements, but conclude that they are insufficient to overcome the lack of the required primary documentation of the Applicant's birth.

The regulations at 8 C.F.R. § 103.2(b)(2)(i) outline rules for submitting secondary evidence and affidavits. If a required document, such as a birth certificate, does not exist or cannot be obtained, an applicant must demonstrate this and submit secondary evidence, such as church or school records, pertinent to the facts at issue. *Id.* If secondary evidence also does not exist or cannot be obtained, the applicant must then demonstrate the unavailability of both the required document and relevant secondary evidence, and submit two or more affidavits, sworn to or affirmed by persons who are not parties to the requested immigration benefit and who have direct personal knowledge of the event and circumstances. *Id.* Secondary evidence must overcome the unavailability of primary evidence, and affidavits must overcome the unavailability of both primary and secondary evidence. *Id.*

The regulations provide further that if a record does not exist, the applicant must submit an original written statement on government letterhead establishing this from the relevant government or other authority. 8 C.F.R. § 103.2(b)(2)(ii). Such statement must indicate the reason the record does not exist, and indicate whether similar records for the time and place are available. *Id.*

The Applicant has not demonstrated, as required, that her birth certificate does not exist or could not be obtained. According to the U.S. Department of State reciprocity schedule, birth certificates for persons born in Burma are available and may be obtained from the Office of Divisional Health Director or Township Medical Officer, depending on where in Burma the person was born. *See* U.S.

Department of State, *U.S. visa and Civil Documents by Country, Burma,* https://travel.state.gov/content/travel/en/us-visas/Visa-eciprocity-and-Civil-Documents-by-Country/Burma.html.

The Applicant has not explained whether her birth was registered in Burma, and if so whether she tried to obtain documents to show this. Nor has she provided an original written statement from the relevant government or other authority in Burma that her birth record does not exist. While we acknowledge the Applicant's statement that she was not issued a birth certificate, this statement alone does not meet the regulatory criteria for establishing that the required document does not exist.

Based on the above, we conclude that the Applicant's statement and UNHCR Household Registration Document are insufficient to overcome the lack of primary and secondary evidence of the Applicant's birth required to establish a biological relationship between her and her naturalized U.S. citizen mother for the purposes of derivative citizenship.[2]

III. CONCLUSION

The Applicant has not provided the requested birth certificate to establish a biological relationship with the naturalized U.S. citizen and the statement she submits on appeal is insufficient to overcome the lack of this evidence. The Applicant therefore has not met her burden of proof to establish derivative citizenship. As such, she is ineligible for a Certificate of Citizenship and her Form N-600 remains denied.

ORDER: The appeal is dismissed.

[2] Furthermore, the record does not include evidence to show that the Applicant's parents are married and that her mother meets the legal custody presumption described in the regulations at 8 C.F.R. § 320.1(1)(i), or that there are other factual circumstances that would support a finding of the mother's legal custody.