U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 8914075

Date: JUNE 16, 2020

Appeal of Milwaukee, Wisconsin 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 upon naturalization of her parents under former section 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432, *repealed by* Sec. 103(a), title I, Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631 (2000). To derive U.S. citizenship under that section, a person born abroad to alien parents must fulfill certain conditions before turning 18 years of age.

The Director of the Milwaukee, Wisconsin Field Office denied the application, concluding that the Applicant did not derive U.S. citizenship because she was not admitted to the United States as a lawful permanent resident until after her 18th birthday.

On appeal, the Applicant asserts that she satisfied all of the requirements for derivative citizenship, including lawful residence in the United States before she was 18 years old and the Director's decision was therefore in error.

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

I. LAW

The Applicant was born in Nigeria in [redacted] 1978 to alien parents who married shortly after her birth. The record indicates that the Applicant was admitted to the United States in 1984 as a nonimmigrant child of an academic student (F-2). Both her parents became U.S. citizens through naturalization in November 1994, when she was 16 years old. The Applicant subsequently adjusted status to that of a lawful permanent resident child of a U.S. citizen in September 1997, when she was 19 years of age.

To determine whether the Applicant derived U.S. citizenship from her parents based on these facts, 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).

The last critical event prior to the Applicant's 18th birthday in [redacted] 1996, is the 1994 naturalization of her parents. At that time, former section 321 of the Act governed derivative citizenship.[1] It provided, in relevant part that a child born abroad to alien parents would become a U.S. citizen upon fulfillment of the following conditions:

> (1) The naturalization of both parents;
>
> . . . if-
>
> (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 thereafter begins to reside permanently in the United States while under the age of 18 years.

The term "lawfully admitted for permanent residence" means the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed. Section 101(a)(20) of the Act, 8 U.S.C. §1101(a)(20).

Because the Applicant was born abroad, she is presumed to be a foreign national 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). Under the preponderance of the evidence standard, the Applicant must demonstrate that her claim is "probably true," or "more likely than not." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

II. ANALYSIS

The only disputed issue on appeal is whether the Applicant has demonstrated that she was residing in the United States pursuant to a lawful admission for permanent residence at the time her parents naturalized or thereafter, but before she turned 18 years old in 1996, as required under former section 321(a)(5) of the Act to derive citizenship.

As stated, the Director concluded that the Applicant did not meet this requirement because she did not obtain lawful permanent resident status until 1997, over a year after her 18th birthday. The Applicant asserts, however, that the phrase "residing pursuant to a lawful admission for permanent residence" in the first clause of former section 321(a)(5) of the Act is distinct from the phrase "begins to reside permanently in the United States" in the second clause of that section. She further states that she began residing in the United States as a nonimmigrant in 1984, and became a U.S. citizen by operation of law in 1994 when her parents naturalized and when she was still under 18 years old. In support, the

[1] We note that the Director incorrectly applied current section 320 of the Act, 8 U.S.C. § 1431, to the Applicant's citizenship claim. That section governs derivative citizenship of individuals who were less than 18 years of age as of its effective date, February 27, 2001. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). The Director's error does not affect our *de novo* review on appeal, because lawful permanent residence in the United States prior to age 18 is a requirement under both current section 320 of the Act and former section 321 of the Act.

Applicant cites to a precedent decision of the U.S. Court of Appeals for the Second Circuit (Second Circuit), *Nwozuzu v. Holder*, 726 F.3d 323 (2d Cir. 2013). The Second Circuit held in that case that "begins to reside permanently" under former section 321(a)(5) of the Act does not require lawful permanent resident status, though it does require "some objective official manifestation of the child's permanent residence," such as an application for lawful permanent resident status. *Id.* at 323 (citing *Ashton v. Gonzales*, 431 F.3d 95, 98-99 (2d Cir.2005)).

The Applicant's reliance on the Second Circuit's decision, however, is misplaced for two reasons. First, like the Board of Immigration Appeals (the Board) we are bound by a circuit court's precedent decisions in cases arising in that circuit, but we are not required to follow them in cases that originated outside of that circuit. *See Matter of Anselmo* 20 I&N Dec. 25, 31 (BIA 1989) (holding that the Board may decline to follow a precedent decision outside the court's circuit if it disagrees with the court's position on a given issue). As there is no evidence that the Applicant's citizenship proceedings originated within the jurisdiction of the Second Circuit, that circuit's precedent is not controlling in her case. Second, even assuming *arguendo* that the Second Circuit's decision in *Nwozuzu* applies in her case, that holding is not dispositive of the Applicant's citizenship claim, as it involved a different set of facts. Specifically, the Second Circuit found that the child satisfied the conditions for derivative citizenship under former section 321 of the Act because his application to adjust status to that of a lawful permanent resident—an "objective and official manifestation of his intent to reside permanently in the United States"—was filed before he turned 18 years old. 726 F.3d at 324. Here, the Applicant did not apply for adjustment of status until September 1996, after she had already turned 18 years of age. Thus, she does not meet the "residing permanently" criteria under the *Nwozuzu* holding, even if we were to apply it in her case.

The Applicant resides within the jurisdiction of the U.S. Court of Appeals for the Seventh Circuit (Seventh Circuit), which has not interpreted the requirement of lawful permanent residence in former section 321(a)(5) of the Act. Accordingly, in adjudication of her citizenship claim we are bound by the precedent decision of the Board in *Matter of Nwozuzu*, 24 I. & N. Dec. 609 (BIA 2008). The Board determined in that case that the second clause of former section 321(a)(5) did not create a distinct way to satisfy the requirement of admission to the United States for lawful permanent residence, but only clarified that the child who obtained lawful permanent status after his or her parent naturalized, but before the age of 18 years would still meet this requirement. In other words, the child may derive citizenship under former section 321 of the Act if he or she resides in the United States as a lawful permanent resident before or after the parent's naturalization, as long as the child is under 18 years old.[2] Here, although the Applicant was 16 years old when both her parents naturalized, she did not

[2] We recognize that the Second Circuit disagreed with the Board's determination and reversed it in *Nwozuzu v. Holder*, *supra*. However, as stated, the Second Circuit decision is not controlling here. Furthermore, other circuits that have addressed this issue have followed the Board's reasoning. *See United States v. Forey-Quintero*, 626 F.3d 1323 (11th Cir. 2010) (holding that the phrase "begins to reside permanently in the United States while under the age of eighteen years" contained in in former section 321(a)(5) of the Act requires the status of a lawful permanent resident); *Gonzalez v. Holder*, 771 F.3d 238 (5th Cir. 2014) (finding that even under the Second Circuit's reading of section 321(a)(5), the "residence" would still have to be lawful in order to form the basis of a claim that the child presented "some objective official manifestation" of permanent residence); *Thomas v. Lynch*, 828 F.3d 11 (1st Cir. 2016) (holding that even under a generous reading of the second part of section 321(a)(5), an individual could not automatically derive citizenship without taking some action to begin residing permanently subsequent to the parent's naturalization, such as applying for lawful permanent resident status).

obtain status as a lawful permanent resident until 1997. Because she was over 18 years old at the time, she is ineligible to derive U.S. citizenship pursuant to former section 321(a)(5) of the Act.

Based on the above, we conclude that the Applicant has not established that she resided in the United States pursuant to a lawful admission for permanent residence when her parents naturalized in 1994, or thereafter and before she turned 18 years old in 1996. Accordingly, she has not met her burden of proof to show that she derived U.S. citizenship from her parents. As such, she is ineligible for a Certificate of Citizenship and her application remains denied.

ORDER: The appeal is dismissed.