

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CHRISTOPHER ANTHONY BUCKNOR	:	CIVIL ACTION
Petitioner,	:	
	:	
v.	:	
	:	
CHARLES W. ZEMSKI, ACTING	:	
DISTRICT DIRECTOR,	:	
IMMIGRATION AND	:	
NATURALIZATION SERVICE	:	NO. 01-3757
Defendant.	:	
	:	

**M E M O R A N D U M**

Newcomer, S.J. February , 2002

Christopher Anthony Bucknor's ("Bucknor") Petition for Habeas Corpus is currently pending before the Court. In that Petition, Bucknor challenges his custody with the Immigration and Naturalization Service ("INS"), and INS' attempts to deport him to Jamaica under a 1996 deportation order from an immigration judge. Specifically, Bucknor claims that he is a derivative United States citizen, and is not subject to INS custody or deportation. The Court concludes that Bucknor may be a citizen if he can demonstrate that his naturalized father had legal custody of him while Bucknor was under 18.

**I. BACKGROUND**

Bucknor and the Government have agreed to the following relevant facts:

Bucknor was born in the Bahamas on January 6, 1972, and

was admitted to the United States as a lawful permanent resident on June 29, 1977. Bucknor's mother was born in Jamaica in 1948, and married petitioner's father on January 25, 1970. When he was born, neither of Bucknor's parents were United States citizens. Bucknor's father, born in Jamaica in October 1945, became a United States citizen on October 1, 1980. Bucknor's parents divorced on February 19, 1985, and Bucknor's mother died in 1997 without ever having become a United States citizen. From February 1985 until sometime in 1988, Bucknor resided with his mother, and visited his father during overnight visits. When Bucknor's mother returned to Jamaica in 1988, Bucknor's father cared for Bucknor. On January 6, 1990, Bucknor turned 18 years of age.

In 1996, Bucknor was ordered deported to Jamaica, and in December 1997, Bucknor was deported following the denial of his deportation appeal. In 1998, INS detained Bucknor in Philadelphia, Pennsylvania and the Government indicted Bucknor in this district with illegal re-entry. Then, on June 25, 1998, Bucknor filed a motion to dismiss his indictment based upon his citizenship before Judge Jan E. DuBois. On July 7, 1998 Judge DuBois dismissed Bucknor's indictment without prejudice. The Government has not appealed that Order.

In August 1999, the INS deported Bucknor to Jamaica pursuant to the 1996 deportation order, but in April 2000, INS

once again detained Bucknor in Philadelphia. On February 27, 2001, Bucknor filed an Application for Certificate of Citizenship with the INS, but on April 24, 2001, the INS Acting District Director in Philadelphia denied Bucknor's Application. Bucknor appealed that denial to the Office of Administrative Appeals ("OAA"), an administrative arm of the Department of Justice. However, on August 21, 2001, the OAA dismissed Bucknor's appeal. This Petition followed.

## **II. DISCUSSION**

The parties agree that Bucknor's claim for derivative citizenship is governed by repealed section 321(a) of the Immigration and Nationality Act codified at 8 U.S.C. § 1432. Although repealed in 2000, this statute was in effect when Petitioner was born, and thus governs Petitioner's claim for citizenship. Tullius v. Albright, 240 F.3d 1317, 1320 (11th Cir. 2001); Drozd v. I.N.S., 155 F.3d 81, 86 (2nd Cir. 1998); Runnett v. Shultz, 901 F.2d 782, 783 (9th Cir. 1990). Accordingly, that statute provided in relevant part:

(a) A child born outside of the United States of alien parents, or of an alien parent and a citizen parent who has subsequently lost citizenship of the United States, becomes a citizen of the United States upon fulfillment of the following conditions:

- (1) The naturalization of both parents; or
- (2) The naturalization of the surviving parent if one of the parents is deceased; or
- (3) The naturalization of the parent having legal

custody of the child when there has been a legal separation of the parents or 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 said 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 (2) or (3) of this subsection, or thereafter begins to reside permanently in the United States while under the age of 18 years.

8 U.S.C. § 1432(a) (repealed).

Here, the parties agree that Bucknor's claim for derivative citizenship specifically relies upon section 321(a)(3).<sup>1</sup>

**A. The Timing of the Parents' Legal Separation**

The parties first disagree over the correct interpretation of section 321(a)(3), and thus disagree over whether Bucknor is a derivative citizen under it. Specifically, the parties disagree over the correct interpretation of the phrase "when there has been a legal separation of the parents."

The Government contends that under section 321(a)(3),

---

<sup>1</sup>Indeed, both of Bucknor's parents did not naturalize before Bucknor turned 18 years of age, so section 321(a)(1) does not apply. Further, the parties agree that 321(a)(2) does not apply. Finally, the Government concedes that sections 321(a)(4) & (5) are satisfied here because Bucknor was younger than 18 years of age and admitted for lawful residence at all relevant times. Thus, only section 321(a)(3) may be applicable to this case.

the naturalization of the parent having legal custody of the child must occur after the legal separation of the parents for the child to become a derivative citizen. In support of this interpretation, the Government argues that the phrase "when there has been a legal separation of the parents" is in the present perfect tense indicating a legal separation that is complete at the time of the parent's naturalization.

In response, Bucknor argues that there is no such "timing" requirement in section 321(a)(3), and that Bucknor can derive citizenship under that section even though Bucknor's father naturalized before his parents legally separated. Bucknor claims that the phrase "when there has been a legal separation" does not denote a time, and the phrase can be interpreted to mean "if there has been a legal separation", or "as long as there has been a legal separation."

When performing statutory interpretation, a court must first direct its inquiry to the statute's actual language. Connecticut Nat'l Bank v. Germain, 503 U.S. 249, 253-54 (1992); Smith v. Fidelity Consumer Discount Co., 898 F.2d 907, 909-10 (3d Cir. 1990). Where the statutory language is clear on its face, a court must give it full force and effect. United States v. Menasche, 348 U.S. 528, 538-39 (1955) (citation omitted). A statute is ambiguous if it can reasonably be read in more than one way. Taylor v. Continental Group Change in Control Severance

Pay Plan, 933 F.2d 1227, 1232 (3d Cir. 1991). To determine whether the statutory language is ambiguous, a court must examine "the language itself, the specific context in which that language is used, and the broader context of the statute as a whole." Marshak v. Treadwell, 240 F.3d 184, 192-93 (3d Cir. 2001) (quoting Robinson v. Shell Oil Co., 519 U.S. 337, 341 (1997)). In addition, when interpreting a statute, courts should endeavor to give meaning to every word which Congress used and therefore should avoid an interpretation which renders an element of the language superfluous. United States v. State of Alaska, 521 U.S. 1 (1997), reh'g denied, 521 U.S. 1144 (1997).

After its own review of section 321(a)(3), the Court does not agree with the Government. When interpreting the phrase "when there has been a legal separation" in section 321(a)(3), the Government would have this Court focus primarily on the phrase "has been", and not the word "when", to conclude that legal separation must occur before naturalization. Had Congress truly intended to require naturalization to occur after parents legally separate, it easily could have used the word "after" instead of "when". Webster's Dictionary attributes varied meanings to the word "when", and several of them can make sense in the phrase at issue here. Webster's New World Dictionary 1663 (College ed. 1957). Those meanings are: 1) at the time that; 2) as soon as; 3) at whatever time; 4) whenever; and 5) if. Id. If

when means "as soon as" in section 321(a)(3), then at the instant parents have separated, the parent having legal custody must be naturalized. Under that interpretation, the only way for a parent to satisfy the statute would be to naturalize before, or at the same time, legal separation occurs. If when means "at the time that" in section 321(a)3), then a parent's naturalization does not assume such a sense of urgency, but may occur at a time after the parents have legally separated. On the other hand, if when means "at whatever time", "whenever" or "if" in section 321(a)(3), then legal separation may be a timeless condition, except to the extent the rest of section 321(a) imposes a time requirement as discussed below.

After reading section 321(a)(3) within section 321(a)'s broader context, the Court finds that the phrase at issue does not require that naturalization occur before or after legal separation. Instead, naturalization must simply occur while the child is under 18. Section 321(a)(4) states that "naturalization [must take place] while said child is under the age of 18 years. . . ." This is the only place in section 321(a) that Congress explicitly indicates when naturalization must occur. Given this clear and unambiguous language, the Court gives this language its full effect, and will not weaken it by straining to construe section 321(a)(3) to require that naturalization occur at any other time.

The Court is also mindful of its duty not to render the phrase "when there has been a legal separation" meaningless. However, that phrase still has significant meaning under the Court's interpretation of section 321(a)(3). Indeed, it imposes a condition of citizenship for a child in the legal custody of a naturalized parent, i.e. parents must be legally separated for a child to claim citizenship under section 321(a)(3), and contrasts 321(a)(3) against 321(a)(1). Section 321(a)(1) requires the "naturalization of both parents" for a child to derive citizenship. However, 321(a)(1) does not account for a situation where a child only has one parent with legal custody over her. Section 321(a)(3) accounts for that scenario with the phrase "when there has been a legal separation." Thus, the phrase both imposes a condition and has contrasting meaning.

Other courts have assumed, without analysis, that under section 321(a), a parent is required to naturalize after legal separation. E.g., Wedderburn v. I.N.S., 215 F.3d 795, 801 (7th Cir. 2000) ("...children become citizens if both parents naturalize, if the surviving parent naturalizes, or if the parent having "legal custody" naturalizes following the parents' "legal separation.") cert. denied, - U.S. -, 121 S.Ct. 1226 (2001); Barton v. Ashcroft, 171 F. Supp. 2d 86, 90 (D.Conn. 2001)(same). These courts did not address the issue this Court now addresses, did not analyze that section's language, or consider that section

in light of the rest of section 321(a). Further, they did not consider Congress' most likely concern when crafting section 321(a)(3); Congress "clearly intended that the child's citizenship should follow that of the parent who then had legal custody" to protect the child "against separation from the parent having legal custody during the child's minority." Fierro v. Reno, 217 F.3d 1, 6 (1st Cir. 2000). Requiring naturalization to occur after legal separation frustrates this intent; a child whose parent having legal custody naturalized before legal separation faces risk of separation from that parent. Thus, given the language of section 321(a)(3), and the broader context of section 321(a), the Court finds that section 321(a)(3) requires that a parent having legal custody of the child naturalize while the child is under 18 for a child to derive citizenship.

**B. Legal Custody**

Next, the Court turns to whether Bucknor's father had "legal custody" of Bucknor within the meaning of section 321(a)(3).<sup>2</sup> The statute and its legislative history fail to

---

<sup>2</sup>When responding to the Government's argument that "legal custody" is not a material condition of derivative citizenship under section 321(a)(3), see Government's Response to Petition For Writ of Habeas Corpus, at 4, Bucknor responds that legal custody is a statutory requirement. Petitioner Bucknor's Brief in Support of Petition for Writ of Habeas Corpus, at 9. Because this Court has now determined that the parent with legal custody of the child must naturalize before the child is 18, this argument is no longer relevant. To the extent Bucknor argues

indicate how federal courts should determine whether a parent had legal custody. See 8 U.S.C. § 1432(a); H.R. Rep. No. 82-1365 (1952). However, when determining whether a parent had legal custody under section 321(a), the United States Court of Appeals for the First Circuit held that "section [321(a)] should be taken presumptively to mean legal custody under the law of the state in question." Fierro, 217 F.3d at 4. Indeed, state law typically governs legal relationships between parents and children because there is "no federal law of domestic relations." De Sylva v. Ballentine, 351 U.S. 570, 580 (1956); Fierro, 217 F.3d at 4; see also Ex parte Burrus, 136 U.S. 586, 593-94 (1890). Further, this approach mirrors the approach taken in other cases where a federal statute depends upon relations that are primarily governed by state law. Fierro, 217 F.3d at 4 (citing as an example De Sylva, 351 U.S. at 580). This Court agrees, and to determine whether Bucknor's father had legal custody over Bucknor, this Court will apply Pennsylvania state law.<sup>3</sup>

In Pennsylvania, legal custody is "the legal right to

---

that legal custody is a requirement under section 321(a)(3), the Court agrees.

<sup>3</sup>Bucknor contends that the Government is bound by the OAA's determination that "the question of legal custody may be determined by the law of a state". Petitioner Bucknor's Brief in Support of Petition for Writ of Habeas Corpus, at 12. While the Court finds that Pennsylvania law govern the question of legal custody, the Court does not find that the Government is bound by the OAA's findings. Bucknor offers no support for that contention.

make major decisions affecting the best interest of a minor child, including, but not limited to, medical, religious and educational decisions." 23 Pa. Cons. Stat. § 5302.

Here, neither party addresses whether Bucknor's father had legal custody of Bucknor within the meaning of Pennsylvania law while Bucknor was under 18.<sup>4</sup> Thus, the Court will Order the parties to brief this issue, and submit appropriate evidence of legal custody.

**C. Res Judicata**

Finally, Bucknor argues that when Judge DuBois dismissed his 1998 indictment on July 7, 1998, he did so because he determined that Bucknor was a citizen. After reviewing Judge DuBois' July 7, 1998 Order, the Court cannot agree with Bucknor.

---

<sup>4</sup>The Government claims that the Philadelphia County divorce decree dated February 19, 1985 does not have a "legal custody" provision, and contends that Bucknor lived with his mother from the divorce in 1985 until sometime in 1988. The Government further claims that in 1988, Bucknor "was committed to a youth detention center and his mother went to Jamaica." Government's Response to Petition For Writ of Habeas Corpus, at 11. The Government then states that Bucknor was "later released from detention to his father" and argues that "physical custody at any given time by one parent or the other has no effect on the 'legal custody' required by statute. Id. In response, Bucknor argues that it is undisputed that "at least in 1988, [Bucknor's father] had 'legal custody'" over Bucknor. Petitioner Bucknor's Brief in Support of Petition for Writ of Habeas Corpus, at 6. These positions shed no light on the critical question: whether Bucknor's father had legal custody over Bucknor under Pennsylvania law.

To the extent Bucknor raises the issue of "physical custody" under section 322(4) of the Immigration and Nationality Act, Child Citizenship Act of 2000, that issue is irrelevant. As discussed earlier, section 321(a) governs this case.

The Court finds that Judge DuBois' Order does not indicate with certainty that he found that Bucknor was a citizen. Moreover, as Judge DuBois dismissed the indictment without prejudice, the Government "may now take the case to another grand jury and start with a clean slate." United States v. Breslin, 916 F. Supp. 438, 446 (E.D.Pa. 1996). Had Judge DuBois determined that Bucknor was a derivative citizen, he presumably would have dismissed the prosecution with prejudice. In light of this record, the Court does not find that the issue of Bucknor's citizenship is res judicata based upon Judge DuBois' July 7, 1998 Order.

An appropriate Order follows.

---

Clarence C. Newcomer, S.J.