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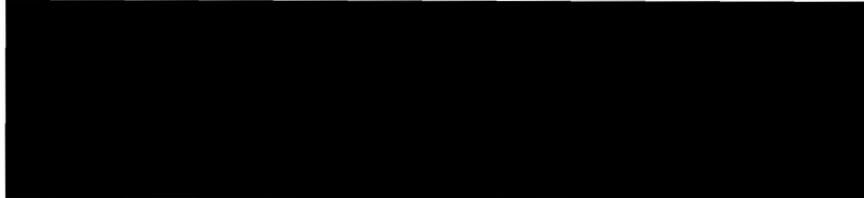
U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:

Office: HOUSTON, TX

Date: APR 07 2008

IN RE:

Applicant:



APPLICATION:

Application for Certificate of Citizenship under Section 321 of the Immigration and Nationality Act; 8 U.S.C. § 1432.

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Form N-600, Application for Certificate of Citizenship (N-600 application) was denied by the District Director, Houston, Texas. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the application will be denied.

The applicant was born in El Salvador on November 5, 1981. The applicant's mother, [REDACTED], was born in El Salvador, and she became a naturalized U.S. citizen on May 1, 1997, when the applicant was fifteen years old. The applicant's father is not a U.S. citizen. The record reflects that the applicant's parents did not marry. The applicant was admitted into the United States pursuant to a lawful admission on October 19, 1993, when he was eleven years old. He presently seeks a certificate of citizenship under section 321 of the former Immigration and Nationality Act (the former Act), 8 U.S.C. § 1432, based on the claim that he derived U.S. citizenship from his mother.

The district director noted that the applicant's birth certificate reflects that his father is [REDACTED], and that his father registered the applicant's birth with the Office of Civil Registry in El Salvador on August 20, 1982. The district director determined that the applicant was thus legitimated under Salvadoran law. Accordingly, he did not satisfy the requirements of section 321(a)(3) of the former Act. The district director found that the applicant also failed to qualify for citizenship under section 322 of the former Act, 8 U.S.C. 1433, because he did not take an oath of allegiance prior to his eighteenth birthday as required by section 322(b) of the former Act. In addition, the district director found that the applicant did not qualify for citizenship under section 320 of the Immigration and Nationality Act, as amended, (the Act) 8 U.S.C. § 1431, because he was over the age of eighteen when the provision went into effect on February 27, 2001. The applicant's N-600 application was denied accordingly.

On appeal, the applicant does not dispute that he is ineligible for citizenship under section 322 of the former Act and section 320 of the Act, as amended. The applicant asserts, however, through counsel, that he is entitled to U.S. citizenship pursuant to section 321 of the former Act. Specifically, the applicant asserts that the paternity information contained in his birth certificate is erroneous, and he asserts that his father is not [REDACTED] as stated on the birth certificate, but rather that his father is [REDACTED] - [REDACTED]'s brother. The applicant asserts that his true father, [REDACTED] disappeared in El Salvador in 1982, and is presumed dead. The applicant asserts that his uncle subsequently provided erroneous paternity information in order to register the applicant's birth with the Office of Civil Registry in El Salvador. The applicant concludes, through counsel, that he was therefore not legitimated by his father under Salvadoran law.

Section 321 of the former Act states in pertinent 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:
 - (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 such child is under the age of eighteen 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 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 eighteen years.

(Emphasis added.) The applicant has not established that his parents were married or that he is eligible to derive citizenship pursuant to sections 321(a)(1) or (a)(2) of the former Act. The AAO finds that the applicant has also failed to establish that he derived U.S. citizenship pursuant to out of wedlock provisions contained in section 321(a)(3) of the Act.

Salvadoran law provides that a child born out of wedlock on or after December 16, 1965, is legitimated once the child's paternity is established. *Matter of Moraga*, 23 I&N Dec. 195 (BIA 2001.) In the present matter, the applicant's birth certificate reflects that he was born in El Salvador in 1981 to [REDACTED] and [REDACTED]. The birth certificate reflects that [REDACTED] acknowledged the applicant as his son and registered the applicant's birth with the Office of Civil Registry in El Salvador on August 20, 1982. The applicant was thus legitimated under Salvador law.

The applicant asserts, through counsel, that his birth certificate contains erroneous information, and that paternity and legitimation have not been established because his uncle [REDACTED] rather than his biological father, [REDACTED], registered his birth before the Civil Registry in El Salvador. In support of his claim, the applicant submits DNA test result evidence reflecting that he and his sister, [REDACTED], have a 99.5% probability of full siblingship and the applicant submits a copy of his sister's birth certificate reflecting that her father is [REDACTED]. The applicant also submits affidavits from himself, two maternal aunts, and his mother's cousin stating that [REDACTED] is the applicant's biological father, and that [REDACTED] disappeared in 1982. In addition, the applicant submits a January 13, 2006 letter from the Center for the Promotion of Human Rights in El Salvador (CPHR), reflecting that the applicant's maternal grandfather's declaration to the CPHR that in 1992, [REDACTED] reported to the CPHR the facts of her companion, [REDACTED], disappearance in El Salvador.

The AAO finds that the evidence submitted by the applicant fails to overcome the birth certificate evidence reflecting that [REDACTED] is his father and that he was legitimated in El Salvador by his father in 1982. The AAO notes that the record does not contain an amended birth certificate for the applicant, or any information to indicate that an attempt was made to amend erroneous paternity information contained in the applicant's birth certificate. The record also contains no death certificate evidence to establish [REDACTED]'s death. The AAO does not find that the January 2006 CPHR letter, containing the applicant's paternal grandfather's declaration about events the applicant's mother allegedly reported in 1992, establishes that the El Salvadoran government has decreed the facts of [REDACTED] disappearance to be true, as indicted by counsel. Rather, the document memorializes declarations made by the applicant's grandfather, and preserves

the applicant's mother's right to initiate a forced disappearance claim for [REDACTED]. The record contains no evidence of the applicant's mother's 1992 declaration. Nor does the 2006 CPHR letter establish that a disappeared person report was actually filed with, or investigated by the Salvadoran government.

The affidavit evidence contained in the record also fails to demonstrate first hand knowledge of the events discussed, and the information is general and unsupported by corroborative evidence. The AAO notes further the applicant's claim, through counsel, that he has recently located his uncle, [REDACTED], in the United States. The record contains no evidence or statements from [REDACTED] however, to establish that he is not the applicant's biological father, or to corroborate the disappearance and paternity claims made by the applicant on appeal, and the AAO finds that the evidence in the record fails to demonstrate that [REDACTED] and [REDACTED] are siblings, or even that they are different people.

Upon review of the record, the AAO finds that applicant's birth certificate constitutes unrebutted proof of the applicant's legitimation by his father under Salvadoran law. The applicant thus failed to meet the requirements contained in section 321(a)(3) of the former Act, and he is ineligible for a certificate of citizenship under section 321 of the former Act.

The regulation provides at 8 C.F.R. § 341.2(c) that the burden of proof shall be on the claimant to establish his or her citizenship by a preponderance of the evidence. The applicant has failed to meet his burden of proof in the present matter. The appeal will therefore be dismissed, and the applicant's N-600 application will be denied.

ORDER: The appeal will be dismissed. The application will be denied.