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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



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Date: Office: BALTIMORE, MD

File:

OCT 18 2011

IN RE: Applicant:

APPLICATION: Application for Certificate of Citizenship under former section 321 of the Immigration and Nationality Act, 8 U.S.C. § 1432 (1978)

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

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

The record reflects that the applicant was born in India on October 2, 1978. The applicant's father became a naturalized U.S. citizen on July 17, 1992. The applicant's mother was born in India, and is not a U.S. citizen. The applicant was admitted to the United States as a lawful permanent resident on May 15, 1994. The applicant seeks a Certificate of Citizenship under former section 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432, claiming that he derived citizenship through his father.

The director determined that the applicant failed to establish eligibility for derivative citizenship under former section 321 of the Act, and denied the application accordingly. *See Decision of the Field Office Director*, dated May 6, 2010. On appeal, counsel contends that the applicant's parents were legally married at the time of the applicant's birth and legally divorced at the time the applicant's father naturalized and the applicant entered the United States as a lawful permanent resident. *See Form I-290B, Notice of Appeal*, dated June 5, 2010. On the Form I-290B, counsel indicates that he will forward additional evidence and/or a brief within thirty days. The record does not, however, contain any additional evidence and is, therefore, considered complete.

Because the applicant was born abroad, he is presumed to be an alien and bears the burden of establishing his claim to U.S. citizenship by a preponderance of credible evidence. *See Matter of Baires-Larios*, 24 I&N Dec. 467, 468 (BIA 2008). The applicable law for derivative citizenship purposes is the law in effect at the time the critical events giving rise to eligibility occurred. *See Minasyan v. Gonzales*, 401 F.3d 1069, 1075 (9th Cir. 2005); *accord Jordon v. Attorney General*, 424 F.3d 320, 328 (3d Cir. 2005). Former section 321 of the Act is therefore applicable in this case.

Former section 321(a) of the Act provided, in pertinent part:

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 unmarried and 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.

The order in which the requirements are fulfilled is irrelevant, as long as all requirements are satisfied before the applicant's 18th birthday. *Matter of Baires-Larios*, 24 I&N Dec. at 470.

The term legal separation means "either a limited or absolute divorce obtained through judicial proceedings." *Afeta v. Gonzales*, 467 F.3d 402, 406 (4th Cir. 2006) (affirming the Board of Immigration Appeals' construction of the term legal separation as set forth in *Matter of H*, 3 I&N Dec. 742, 744 (BIA 1949)) (internal quotation marks omitted); see also *Minasyan v. Gonzales*, 401 F.3d at 1076 (stating that term legal separation refers to a separation recognized by law; considering the law of California, which had jurisdiction over the applicant's parents' marriage).

Here, the applicant satisfied several of the requirements for derivative citizenship set forth in former section 321(a) of the Act before his eighteenth birthday. Specifically, the applicant was admitted to the United States as a lawful permanent resident when he was sixteen years old, and the applicant's father became a naturalized U.S. citizen when he was fourteen years old. However, the applicant has not shown that his parents were legally separated while he was under the age of 18 years, as required by former section 321(a)(3) of the Act.

On appeal, counsel contends that the applicant qualifies for derivative citizenship based on the naturalization of his father, the parent having legal custody when there has been a legal separation of the parents. Counsel contends that the affidavits in the record establish that the applicant's parents were legally married and then divorced. The record contains a Birth Certificate indicating that the applicant's birth was registered in the Register of Municipal Committee, Sirsa, India, on October 9, 1978 and reflects the applicant's father's name. The record contains affidavits, dated July 2, 1982, and November 8, 1982, from the applicant's mother and paternal grandfather indicating that the applicant's mother married the applicant's father in accordance with Hindu rites on April 4, 1971. The applicant's mother's affidavit also indicates that the marriage was dissolved on March 15, 1979. These documents are not evidence of a limited or absolute divorce obtained through legal proceedings in India. The Hindu Marriage Act of 1955 does not make it compulsory for a marriage to be registered in the Hindu Marriage Register; however, it does require that a marriage may only be dissolved by divorce through a decree of divorce issued by a court. See *Hindu Marriage Act 1955*. The applicant has failed to provide a decree of divorce for his parents. The record therefore reflects that the applicant's parents were married in 1971 but that the marriage was not legally dissolved. Consequently, the applicant did not derive citizenship through his father under former section 321(a)(3) of the Act.

The applicant is also ineligible to derive citizenship under any other subsection of former section 321(a) of the Act. Because his mother did not naturalize, he cannot derive citizenship under former section 321(a)(1) of the Act. The record does not indicate that the applicant's mother was deceased

prior to the applicant's eighteenth birthday and he is consequently ineligible to derive citizenship from his father under former section 321(a)(2) of the Act.

The applicant bears the burden of proof to establish his eligibility for citizenship under the Act. Section 341 of the Act, 8 U.S.C. § 1452; 8 C.F.R. § 341.2(c). Here, the applicant has not established that he met all of the conditions for the automatic derivation of U.S. citizenship pursuant to former section 321 of the Act before his eighteenth birthday. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.