



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: **APR 30 2013**

Office: LAWRENCE, MA

FILE: [REDACTED]

IN RE: [REDACTED]

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for Certificate of Citizenship under former section 321 of the Immigration and Nationality Act, 8 U.S.C. § 1432 (repealed)

ON BEHALF OF PETITIONER:
[REDACTED]

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.


Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The record reflects that the applicant was born in the Dominican Republic on [REDACTED]. The applicant's mother, [REDACTED] married [REDACTED] on April 25, 1987. The applicant was adopted by his step-father on February 1, 1989. The applicant's adopted father was born in Puerto Rico on [REDACTED] and became a U.S. citizen by operation of law on January 13, 1941. The applicant was admitted to the United States as lawful permanent resident on June 30, 1990. The applicant's mother is not a U.S. citizen. The applicant's parents divorced in 1995. 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 U.S. citizenship through his father.

The field office director determined that the applicant is statutorily ineligible for a certificate of citizenship because he was not residing in his father's legal custody when his father naturalized in 1941. The application was denied accordingly.

On appeal, the applicant, through counsel, contends that he was in his father's custody and began to reside permanently in the United States before the age of eighteen. *See* Appeal Brief. Counsel maintains that the applicant was in his parent's joint custody following their separation and that he was residing in the United States since before his eighteenth birthday. *Id.*

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). 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 that in effect at the time the critical events giving rise to eligibility occurred. *Minasyan v. Gonzales*, 401 F.3d 1069, 1075 (9th Cir. 2005). Former section 321 of the Act was the law in effect prior to the applicant's eighteenth birthday, and 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

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(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.

(b) Subsection (a) of this section shall apply to an adopted child only if the child is residing in the United States at the time of naturalization of such adoptive parent or parents, in the custody of his adoptive parent or parents, pursuant to a lawful admission for permanent residence.

At issue in this case is whether the applicant can establish that he was residing in the United States at the time of his father's naturalization. The applicant's father became a U.S. citizen by operation of law in 1941, pursuant to section 202 of the Nationality Act of 1940. The applicant's father did not naturalize. Former section 321 of the Act does not provide for derivation of U.S. citizenship other than upon the naturalization of a parent. Moreover, former section 321(b) of the Act provides for derivation of U.S. citizenship by adopted children "only if the child is residing in the United States at the time of naturalization of [the parent]." *See Smart v. Ashcroft*, 401 F.3d 119, 123 (2nd Cir. 2005). The applicant was born after his adoptive father became a U.S. citizen. The Act, as in effect before the applicant's eighteenth birthday, does not provide for acquisition of U.S. citizenship at birth through an adoptive parent. Amendments to the Act enacted in 1978 provided that an adopted child may derive U.S. citizenship, but only upon fulfillment of the applicable requirements. The applicant cannot satisfy the statutory requirements of former section 321(b) of the Act and is therefore ineligible for a certificate of citizenship.

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.