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

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

Date: OCT 2 3 2013 Office: NEW YORK, NY File: [redacted]

IN RE: Applicant: [redacted]

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

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Form N-600, Application for Certificate of Citizenship (Form N-600) was denied by the District Director, New York, New York, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision shall be withdrawn, and the matter remanded to the director for entry of a new decision.

The record reflects that the applicant was born in Haiti on February 1, 1977, to unmarried parents. His mother became a naturalized U.S. citizen on November 1, 1983, when the applicant was six years old. His father is not a U.S. citizen. The applicant was admitted into the United States as a lawful permanent resident on December 28, 1984, at the age of seven. The applicant presently seeks a certificate of citizenship pursuant to former section 321 of the Immigration and Nationality Act (the former Act), 8 U.S.C. § 1432, based on the claim that he derived U.S. citizenship through his mother.

In a decision dated December 18, 2012, the director determined that the applicant failed to establish that he met the requirements for derivative citizenship under section 321 of the former Act, or under section 320 of the Immigration and Nationality Act, as amended (the Act), 8 U.S.C. § 1431. The application was denied accordingly.

Through counsel, the applicant asserts on appeal that his father died prior to his 18th birthday; that he had no opportunity to indicate this fact on his Form N-600, or during a citizenship interview; and that he therefore meets section 321(a)(2) of the former Act derivative citizenship requirements. In support of these assertions, counsel submits a copy of the applicant's father's death certificate. The applicant does not contest that he is ineligible for citizenship under section 320 of the Act.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ,* 381 F.3d 143, 145 (3d. Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

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). *See also,* 8 C.F.R. § 341.2(c) (the burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence.) The "preponderance of the evidence" standard requires that the record demonstrate that the applicant's claim is "probably true," based on the specific facts of each case. *Matter of Chawathe,* 25 I&N Dec. 369, 376 (AAO 2010) (citing *Matter of E-M-,* 20 I&N Dec. 77, 79-80 (Comm. 1989)). Even where some doubt remains, an applicant will meet this standard if she or he submits relevant, probative and credible evidence that the claim is "more likely than not" or "probably" true. *Id.* (citing *INS v. Cardoza-Fonseca,* 480 U.S. 421, 431 (1987)).

Section 320 of the Act, as amended by the Child Citizenship Act of 2000 (the CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), 8 U.S.C. § 1431, took effect on February 27, 2001, and provides, in pertinent part, that:

(a) A child born outside of the United States automatically becomes a citizen of the United States when all of the following conditions have been fulfilled:

(1) At least one parent of the child is a citizen of the United States, whether by birth or naturalization

(2) The child is under the age of eighteen years

(3) The child is residing in the United States in the legal and physical custody of the citizen parent pursuant to a lawful admission for permanent residence.

Section 320 of the Act provisions are not retroactive and apply only to persons who were not yet 18 years old as of February 27, 2001. Because the applicant was over the age of 18 on February 27, 2001, he is not eligible for citizenship under section 320 of the Act. *See Matter of Rodriguez-Tejedor,* 23 I&N Dec. 153 (BIA 2001).

All persons who derived citizenship automatically under section 321 of the former Act, as previously in force prior to February 27, 2001, may apply for a certificate of citizenship at any time. *Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153. Section 321 of the former Act is applicable in this case.

Section 321 of the former Act provided in pertinent part that:

> (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:
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> (1) The naturalization of both parents; or
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> (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.

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.467, 470.

The record reflects that the applicant's father was not a U.S. citizen. The provisions contained section 321(a)(1) of the former Act have therefore not been met.

The applicant also fails to meet the requirements set forth in section 321(a)(3) of the former Act, as the record reflects that his parents did not marry. The term, "legal separation" means "either a limited or absolute divorce obtained through judicial proceedings." *Matter of H*, 3 I&N Dec. 742, 744 (BIA 1949). "The term 'legal separation,' can refer only to a situation where there has been a termination of the marital status . . . [where] the subject's parents were not lawfully joined in wedlock, they could not have been legally separated." *Id.* The applicant therefore failed to establish that his parents were legally separated. In addition, the Civil Code of Haiti provides that children born out of wedlock after January 27, 1959, and acknowledged by their natural father are considered to be legitimate children under Haitian law. *Matter of Cherismo*, 19 I& N Dec. 25 (BIA 1984). Acknowledgment of a natural child may be done through the birth registration. *Matter of Richard*, 18 I&N Dec. 208, 211 (BIA 1982). Here, the record contains the applicant's Haitian birth certificate, reflecting his father's paternity, signed by his father, and registered with the Civil Registrar of Port-au-Prince, Haiti on March 21, 1977. Paternity of the applicant was therefore established by legitimation. Section 321(a)(3) of the former Act requirements have therefore not been met.

The director determined, in the December 18, 2012 denial decision, that the applicant also failed to establish that his father was deceased, or that the applicant qualified for derivative citizenship pursuant to the provisions contained in section 321(a)(2) of the former Act. A review of the record reflects that the applicant's Form N-600, filed on February 13, 2012, contained no statement or evidence to indicate that the applicant's father was deceased. Counsel asserts on appeal, however, that there is no place to indicate the death of a parent on the Form N-600, and that, because the applicant was not afforded an interview on his citizenship application, he was unable to present evidence of his father's death to the director. On appeal, counsel submits a copy of a death certificate reflecting that the applicant's father died in Haiti on April 4, 1994. Counsel asserts that the death certificate evidence demonstrates that the applicant's father was deceased prior to the applicant's 18th birthday, and that the applicant is therefore eligible to derive citizenship through his mother pursuant to section 321(a)(2) of the former Act provisions.

We agree that the applicant would derive U.S. citizenship under section 321 of the former Act, if it is determined that his father died on April 4, 1994. We note, however, that the record does not contain the original death certificate for the applicant's father. In addition, the death certificate copy submitted on appeal reflects that it was issued on March 12, 2012, after the applicant filed his Form N-600 application, and almost 18 years after the date of the applicant's father's death. The death certificate also reflects that issuance of the certificate was based on the statements of one person regarding the applicant's father's death.

The director has not had the opportunity to evaluate the validity of the applicant's father's death certificate evidence, or the validity of the applicant's claim to citizenship under section

321(a)(2) of the former Act, in light of the new evidence. The matter will therefore be remanded to the director for review of the applicant's evidence and claim under section 321(a)(2) of the former Act. Upon remand, the director shall provide the applicant an opportunity to submit evidence that he fulfilled the requirements of former section 321 of the former Act before entering a new decision into the record. If the applicant is found ineligible for citizenship under section 321 of the former Act, the director shall certify the decision to the AAO for review.

ORDER: The director's decision is withdrawn. The matter is remanded to the director for entry of a new decision which, if adverse to the applicant, shall be certified to the AAO for review.