



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: OCT 25 2013

OFFICE: BALTIMORE, MD

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

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. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

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 Orleans, Louisiana, and the Administrative Appeals Office (AAO) rejected the appeal. The AAO subsequently granted a motion to reopen the matter, and the appeal was dismissed. The applicant filed another Form N-600, which the Baltimore Field Office Director (the director) properly rejected. A second motion to reopen was dismissed by the AAO as untimely filed. The matter is now before the AAO on a third motion to reopen. The motion will be dismissed. The underlying application will remain denied.

The director determined in a decision dated March 14, 2005, that the applicant failed to establish that he derived U.S. citizenship through his father under section 321 of the former Act, 8 U.S.C. § 1432.¹ The applicant's Form N-600 was denied accordingly. The AAO rejected an appeal as untimely filed on March 30, 2006. The AAO subsequently granted a motion to reopen the matter, and determined that the applicant had failed to establish that he derived U.S. citizenship through his father under section 321 of the former Act. The appeal was dismissed, accordingly, on September 14, 2006. The AAO dismissed a motion to reopen as untimely filed on December 15, 2011. The matter is now before the AAO on a third motion to reopen.

On motion, the applicant acknowledges, through counsel, that he did not timely file his previous motion to reopen with the AAO. Counsel asserts, however, that the delay was reasonable and beyond the applicant's control based on the applicant's father's unwillingness to provide assistance; the applicant's incarceration and detention between July 2001 and November 2007; the applicant's difficulty finding free and competent legal counsel to assist him; and the time it took the applicant to become financially and otherwise stable after his release from custody. Counsel additionally asserts that new evidence establishes that the applicant qualifies for U.S. citizenship under section 321 of the former Act. To support the assertions, counsel submits a declaration from the applicant, and a February 5, 2008, delay-issued death certificate for the applicant's mother.

The regulations provide at 8 C.F.R. § 103.5(a)(1)(i), that in order to properly file a motion to reopen or reconsider, the affected party must file the motion within 30 days after service of the unfavorable decision. If the decision was mailed, the motion must be filed within 33 days. *See* 8 C.F.R.

¹ Section 321 of the former Act provided, 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 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.

§ 103.5a(b). The date of filing is the date of actual receipt of the motion, not the date of mailing. *See* 8 C.F.R. § 103.2(a)(7)(i). Under 8 C.F.R. § 103.5(a)(1)(i), the untimely filing of a motion to reopen or reconsider may be excused in the discretion of the Service, where it is demonstrated that the delay was reasonable and was beyond the control of the applicant. Here, the record reflects that the applicant's previous motion to reopen was filed on October 27, 2011, over five years after the AAO decision issued on September 14, 2006. The motion was therefore untimely filed.

To establish that the delay in filing the motion was reasonable and beyond the applicant's control, counsel submits a declaration from the applicant stating, in pertinent part, that the applicant was emotionally and physically abused by his father when he immigrated to the United States; that as a result he left his father's home at the age of 18 (around 1993); and that his father refused to assist or file U.S. citizenship paperwork on the applicant's behalf. The applicant states that he was arrested on July 19, 2001; was incarcerated until March 30, 2007, and detained by the immigration service until November 23, 2007; and because he was unable to find free legal assistance and his father did not provide him with the evidence he needed, he was unable to obtain his mother's death certificate and his citizenship application was denied. The applicant states that after his release from custody, it took about two years to find a job, stable housing, and free legal counsel to assist him with his citizenship application. He then filed a new Form N-600, with death certificate evidence, in July 2008.

A delay-issued death certificate for the applicant's mother, issued in [REDACTED] on February 5, 2008, and indicating the applicant's mother died on January 7, 1992, is also contained in the record.

Upon review, we find that the evidence in the record fails to establish that the delay in filing a motion to reopen was reasonable and beyond the control of the applicant. The record contains no independent evidence to corroborate assertions that the applicant was the victim of abuse by his father, or that his father impeded his ability to establish a U.S. citizenship claim under section 321 of the former Act. In addition, the applicant indicates in his declaration that he has aware of his mother's death when he initially filed his Form N-600 on November 11, 2004. His Form N-600, however, contains no indication that his mother is deceased, and the applicant's appeal, filed on April 25, 2005, and his April 14, 2006 motion to reopen request also contain no statement or indication that his mother is deceased. The record fails to corroborate the applicant's assertions that an inability to obtain legal assistance while in custody impeded his ability to file a citizenship application or obtain evidence necessary to establish his citizenship status. Moreover, the record contains no evidence to corroborate assertions that the passage of time between the delayed-issuance of the applicant's mother's death certificate in February 2008, and the applicant's submission of the evidence to the Service in August 2009, was reasonable or beyond the applicant's control, due to an inability to find stable work or housing after the applicant's release from custody.

Neither the Act nor the pertinent regulations grant the AAO authority to extend the time limit for filing a motion, unless it is demonstrated that the delay was reasonable and was beyond the control of the applicant. Here, the applicant has failed to establish that the almost five year delay in filing his motion to reopen was reasonable or beyond his control. The motion is therefore dismissed.

Furthermore, even if the applicant had met the requirements of a motion to reopen, which he has not, he would have failed to establish that he derived U.S. citizenship through his father, pursuant to section 321 of the former Act.

Similar to a delayed birth certificate, the same evidentiary weight does not attach to a delayed death certificate, as would attach to one contemporaneous with the actual death. *Matter of Lugo-Guadiana*, 12 I&N Dec. 726 (BIA 1968). A delayed certificate must be evaluated in light of other evidence in the record and in light of the circumstances of the case. *Matter of Bueno-Almonte*, 21 I&N Dec. 1029, 1033 (BIA 1997). Here, the death certificate submitted by the applicant has diminished evidentiary weight. The death certificate was issued 16 years after the applicant's mother's purported death, and it does not state the basis upon which it was issued, or reflect the circumstances of the applicant's mother's death. The record contains no corroborative documentary evidence regarding the applicant's mother's death, or the registration of her death. Moreover, the applicant's affidavit statements about his mother's death lack material detail and are not based on personal knowledge of the event. Furthermore, although the applicant indicates that he was aware of his mother's death prior to his 18th birthday, he makes no mention of his mother's death in his Form N-600, filed in November 2004; in the April 2005 AAO appeal, filed after his Form N-600 was denied; or in the April 2006, motion to reopen the denial of his appeal.

The regulation at 8 C.F.R. § 341.2(c) provides that the burden of proof is on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. Here, the applicant's burden of proof has not been met.

ORDER: The motion to reopen is dismissed. The underlying application remains denied.