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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

Date: MAR 19 2014 Office: YAKIMA, WA FILE:

IN RE: Applicant:

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:

SELF-REPRESENTED

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 Yakima, Washington Field Office Director (the director) denied the Application for Certificate of Citizenship (Form N-600) and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the application will remain denied.

Pertinent Facts and Procedural History

The applicant claims to have been born on March 28, 1983 in Sudan. The record contains evidence that the applicant was born one year earlier on March 28, 1982. The applicant asserts that his parents were married at the time of his birth. The applicant's father, [redacted] was naturalized on December 5, 2000, and his mother, [redacted], was naturalized on December 8, 2000. The applicant was admitted as a refugee on September 8, 1993 and he was later accorded lawful permanent resident status as of that date on November 20, 1996. The applicant seeks a certificate of citizenship, on the basis that he derived U.S. citizenship through at least one of his U.S. citizen parents pursuant to current section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The director denied the applicant's citizenship claim under current section 320 of the Act after determining that this provision, as amended by the Child Citizenship Act of 2000, was inapplicable to the applicant based upon his age. The director also denied the applicant's claim under former section 321 of the Act because the applicant failed to demonstrate that he was under the age of eighteen when his mother was naturalized. The applicant filed a timely appeal.

Applicable Law

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. *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). The Child Citizenship Act of 2000 (CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), effective as of February 27, 2001, amended provisions of sections 320 and 322 of the Act, which apply only to persons who were not yet eighteen years of age on the effective date. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). If the applicant here was born on March 28, 1983, as he asserts, then the CCA would be applicable to his citizenship claim because he would have been under the age of eighteen on the February 27, 2001 effective date. If, however, the applicant was born on March 28, 1982, he would have been over eighteen years of age on the effective date and his claim would fall under the provisions of former section 321 of the Act.

Section 320 of the Act, as amended, provides, in part:

(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.

Former section 321 of the Act provided 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:

(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 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 (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 18 years.

Citizenship Claim Under The Child Citizenship Act

An issue in this proceeding is whether the CCA is applicable to the applicant's citizenship claim. As noted, the applicant claims on his Form N-600 to have been born on March 28, 1983, and thus, asserts that he was seventeen years old on the February 27, 2001 CCA effective date and when his parents naturalized in December 2000. In contrast, prior to and at the time of the approval of his application for admission as a lawful permanent resident, the applicant and his parents asserted that he was born on March 28, 1982, which necessarily means that the applicant was already eighteen years old on the effective date and that the CCA would not apply to these proceedings.

The record contains no birth certificate for the applicant, but his refugee records listed his date of birth as January 1, 1981. A copy of the applicant's baptismal certificate, issued by the Refugee Orthodox Church in was later submitted to amend the applicant's date of birth. The certificate is unclear as to when it was issued but states that the applicant was born on March 28, 1982 in Kassala, Sudan and was baptized on May 8, 1982, well before the 1983 date of birth the applicant now asserts. Based on this certificate, immigration records were amended, reflecting the applicant's birthdate as March 28, 1982. The record also indicates that a Form I-102, Application for Replacement/Initial Nonimmigrant Arrival-Departure Document, and a Form G-325A, Biographic Information, in connection with the applicant's adjustment of status application, were submitted on the applicant's behalf in 1994 and 1995, respectively, both of which again listed the applicant's year of birth as 1982. Ultimately, a Form I-181, Memorandum of Creation of Record of Lawful Permanent Residence, was issued, indicating that the applicant was born in Sudan on March 28, 1982. There is no evidence in the record that the applicant's parents at any time sought or attempted to amend the applicant's year of birth to 1983. Additionally, the applicant filed a Form N-400, Application for Naturalization, in 2001 and 2006, and on both occasions, he asserted and swore to the 1982 date of birth before an immigration officer. The record also contains the applicant's Record of Sworn Statement, dated April 11, 2007, regarding his lost Alien Registration Card, in which he again stated that his date of birth was March 28, 1982.

The applicant has submitted a personal statement, dated September 3, 2013, in which he asserts that his parents advised him that his baptismal certificate contained the wrong date of birth, as it was prepared very quickly in preparation to leave Sudan as a refugee. He states that his parents did not speak or read English well, and therefore, they had someone else prepare the applicant's application for lawful permanent residence. Additionally, the applicant states that at the time he filed his 2006 naturalization application, he had someone else prepare the form and did not pay attention to his date of birth or the other information on the form when he signed it. The applicant does not address his 2001 naturalization application.

The record also contains two statements from the applicant's mother. The applicant's mother, in a statement dated August 26, 2013, recollects that when her family came to the United States as refugees, the applicant's date of birth was incorrectly listed as January 1, 1981 and then later changed to March 28, 1982, which was also incorrect. She explains that it was common to not have a birth certificate in Sudan and that no one in her family had one. The applicant's mother claims that the applicant was born on March 28, 1983 and eleven months later, her second son, was born in February 1984. She also recalls that, before her husband passed away, he had been working on correcting the dates of birth of several of their children, including the applicant's. The applicant's mother states that she did not continue her husband's attempts because she lacked the financial resources and the English language. In a second undated and brief statement submitted the same month, the applicant's mother claims that her husband never shared any of the information he may have obtained during his endeavors to correct the applicant's date of birth.

The applicant has also submitted statements from seven family friends, in which they recall the applicant's claimed birth on March 28, 1983 in Sudan. The statements are similar and very brief in nature, and they do not set forth in any detail the basis of each affiant's recollection of events that occurred nearly thirty years ago. Aside from one statement from the remaining

statements offer no explanation as to how the declarants recall the exact date and year of the applicant's birth. Mr. states that he recalls the applicant's birth because he had a few relatives born the same year, but his general assertion is insufficient where he offers no corroborating, objective evidence, such as evidence of his relatives' birth in Sudan in 1983. Further, the record lacks any independent, objective evidence at all to support the assertions of the declarants, including that they were even residing in Sudan at the time the applicant was born.

As noted, the burden of proof to establish a claim of U.S. citizenship lies with the applicant. *See Matter of Baires-Larios*, 24 I&N Dec. at 468. Here, the record shows that the applicant and his parents consistently utilized the earlier 1982 date of birth for the applicant until 2013, when he was taken into immigration custody and placed into removal proceedings before the Immigration Court. In fact, the applicant swore to the 1982 birth year on his two Form N-400 applications in 2001 and 2006, and again, in an April 2007 sworn statement before an immigration officer. On appeal, the applicant again asserts that the 1983 birthdate is the correct date and maintains that the error originated from the mistaken date of birth contained in his baptismal certificate. However, neither the applicant nor his mother ever elaborated on how the error in his date of birth occurred, other than to make a general assertion that the baptismal certificate was obtained quickly. Moreover, the applicant does not address the fact that the certificate also indicates that he was baptized in 1982, before his now asserted 1983 birth. Further, although the applicant and his mother contend that the applicant's father sought to correct his year of birth, there is nothing in the record to suggest that this was ever attempted before United States Citizenship and Immigration Services (USCIS) or the legacy Immigration and Naturalization Service (INS). The applicant's explanation that his parents failed to correct his birthdate earlier because they lacked financial resources and knowledge of the English language is inadequate, given they were successfully able to amend his date of birth in immigration records once before, shortly after their admission to the United States. It also does not explain the lack of any correspondence from the applicant's father in USCIS records seeking to correct the applicant's birthdate in his immigration records.

On appeal, the applicant also contends that his prior use of the 1982 date of birth on his N-400 applications should not be a basis to deny his claim. He now states for the first time that he did not learn of the error in his birthdate on his baptismal certificate or of his father's attempts to correct the applicant's and his siblings' birthdates, until 2010 when he advised his father that his naturalization applications had been denied. The applicant's explanation is inconsistent with his prior September 2013 statement, in which he explained his use of the 1982 birthdate in his naturalization applications by averring only that he had not paid attention to his date of birth or other information in the N-400 purportedly prepared by another. He made no assertion in the earlier statement that he was unaware that his 1982 birthdate was incorrect at the time he filed his naturalization applications in 2001 and in 2006. There is also no explanation offered as to why his parents withheld information from the applicant about the error in his birthdate or about his father's attempt to correct it. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Here, the noted discrepancies and inconsistencies cast further doubt on the reliability of the applicant's assertion that he was in fact born in 1983.

The applicant further contends on appeal that the director erred in requesting independent evidence where the record contained the affidavits of his mother and family friends corroborating his claimed 1983 date of birth. The applicant's mother's statements and the brief statements of the applicant's family friends are not independent, objective evidence and fail to establish by a preponderance of the evidence the applicant's claimed 1983 birth year. As noted, there is no evidence that the applicant's mother ever acknowledged or asserted that the applicant's 1982 year of birth was incorrect until the applicant was taken into immigration custody and placed into removal proceedings in 2013. To the contrary, the evidence of record indicates that his parents "corrected" his date of birth from January 1, 1981 to March 28, 1982 by submitting a baptismal birth certificate, which neither parent has ever acknowledged, before USCIS or any other governmental agency, as containing the wrong birthdate for the applicant prior to 2013. The affiants' bare bone assertions that the applicant was born in 1983, without independent, objective evidence, are insufficient to satisfy the applicant's burden of proof by a preponderance of the evidence, particularly where discrepancies and inconsistencies exist. Where a claim of derivative citizenship has reasonable support, it cannot be rejected arbitrarily. However, when good reasons appear for rejecting such a claim such as the interest of witnesses and important discrepancies, then USCIS need not accept the evidence proffered by the applicant. *Matter of Tijerina-Villarreal*, 13 I&N Dec. 327 (BIA 1969). Here, the statements of the applicant's mother and family friends are neither independent nor objective and lack probative details; the record otherwise lacks such evidence.

Upon de novo review of the record, the applicant has failed to establish that he was born on March 28, 1983, and he, therefore, has not demonstrated that he was still under the age of eighteen on February 27, 2001, the effective date of the CCA. Accordingly, the CCA does not apply to the applicant's citizenship claim.

Citizenship Claim Under Former Section 321 of the Act

The applicant's citizenship claim falls under former section 321 of the Act, as the CCA is inapplicable here. The record shows that the applicant satisfies some, but not all, of the requirements for derivative citizenship set forth in former section 321(a) of the Act. Both of the applicant's parents were naturalized, as required, and the applicant was residing in the United States pursuant to a lawful admission for permanent residence before his eighteenth birthday. However, he does not derive U.S. citizenship under former section 321(a) of the Act, because both of his parents must have naturalized before his eighteenth birthday in order to derive under the applicable clause of former section 321(a) of the Act, which is former section 321(a)(1) of the Act (the naturalization of both parents). Since the record shows that the applicant was born on March 28, 1982, neither of the applicant's parents naturalized before his eighteen birthday. The applicant, therefore, cannot derive citizenship under former section 321 of the Act.

Accordingly, the applicant has not satisfied his burden to demonstrate that he derived citizenship through his U.S. citizen parents, and his citizenship claim under former section 321 of the Act must be denied.

Conclusion

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); 8 C.F.R. § 320.3. Here, the applicant has failed to meet his burden. Accordingly, the applicant is not eligible for a certificate of citizenship under current section 320 or former section 321(a) of the Act, and the appeal will be dismissed.

ORDER: The appeal is dismissed and the application remains denied.