

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

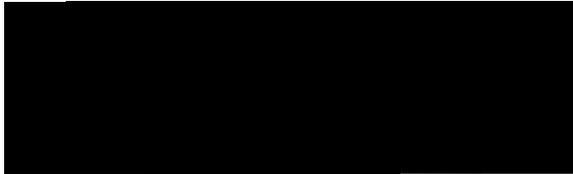
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

E2



FILE: [REDACTED] Office: HOUSTON, TX Date: JUN 02 2009

IN RE: [REDACTED]

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

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in black ink that reads "John F. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Houston, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on April 5, 1981 in Nigeria. The record indicates that the applicant's parents are [REDACTED] and [REDACTED]. The applicant's parents were married in Nebraska on October 24, 1971. The applicant's mother became a U.S. citizen upon her naturalization on October 4, 1991, when the applicant was 10 years old. The applicant was admitted to the United States as a lawful permanent resident on October 3, 1992, when the applicant was 11 years old. The applicant seeks a Certificate of Citizenship claiming that he derived U.S. citizenship under section 321 of the former Immigration and Nationality Act (the former Act), 8 U.S.C. § 1432 (repealed).

The Field Office Director denied the applicant's claim finding that he had failed to establish that his parents were divorced. The application was accordingly denied.

On appeal, the applicant submits, in relevant part, a copy of a handwritten manuscript purporting to be his parents' divorce judgment. The applicant maintains that his parents were divorced on April 12, 1990, and that he therefore derived U.S. citizenship upon his mother's naturalization. *See* Applicant's Appeal Brief.

"The applicable law for transmitting citizenship to a child born abroad when one parent is a U.S. citizen is the statute that was in effect at the time of the child's birth." *Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1029 (9th Cir. 2000) (citations omitted). The applicant in this case was born in 1981. Section 321 of the former Immigration and Nationality Act (the former Act), 8 U.S.C. § 1432 (repealed) is therefore applicable to the applicant's claim.¹

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:

- (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

¹ The Child Citizenship Act of 2000 (the CCA) amended sections 320 and 322 of the Act, 8 U.S.C. §§ 1431 and 1433, and repealed section 321 of the Act, 8 U.S.C. § 1432. The CCA took effect on February 27, 2001, and benefits all persons who had not yet reached their 18th birthdays as of February 27, 2001. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). The applicant was over the age of 18 on February 27, 2001, he therefore does not meet the age requirement for benefits under the CCA.

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.

(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, in the custody of his adoptive parents, pursuant to a lawful admission for permanent residence.

8 U.S.C. § 1432.

The applicant was admitted to the United States as a lawful permanent resident at the age of 11. The applicant's mother became a U.S. citizen on October 4, 1991, when the applicant was 10 years old.

The record contains a copy of a divorce decree and a handwritten manuscript relating to the applicant's parents' divorce purporting to evidence that the applicant's parents were divorced on April 12, 1990 and that custody of the applicant was awarded to his mother. Nevertheless, as noted by the field office director, the applicant's mother claimed to be married in her naturalization application and interview as well as in the petition for alien relative she filed in the applicant's behalf. The applicant unsuccessfully attempts to explain the discrepancies in his mother's immigration documents by stating that they were the result of a clerical error by a notary. The AAO notes, however, that the applicant's Form N-600, Application for Certificate of Citizenship, submitted by current counsel, lists the applicant's father as his mother's "current spouse." The Form N-600 indicates further that the applicant's parents reside together at 4054 Mission Valley, Missouri City, Texas. In addition, an undated "Bond Worksheet" completed after his 2008 conviction for possession of marijuana notes that he will be residing with "Parents (Father & Mother)" at the same address as noted above. Moreover, the AAO notes that the applicant's parents were married in Nebraska in 1971, but purportedly divorced in Nigeria in 1990. No explanation was provided as to why the divorce decree was not provided earlier, in 1992, when the applicant immigrated to the United States. The AAO notes that the applicant's immigrant visa documentation dated in 1991 indicates that his parents were married at the time and includes, for example, evidence that his parents held a joint bank account.

The applicant has, after ample opportunities, failed to explain the discrepancies that cast doubt on the validity of the divorce document submitted. As the Board of Immigration Appeals stated in *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988), "it is incumbent upon the [applicant] to resolve the inconsistencies by independent objective evidence. Attempts to explain or reconcile the conflicting

accounts, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice.”

The AAO must therefore find that the applicant cannot meet his burden of proof to establish that he derived U.S. citizenship upon his mother’s naturalization. 8 C.F.R. § 341.2(c) provides that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. In order to meet this burden, the applicant must submit relevant, probative and credible evidence to establish that the claim is “probably true” or “more likely than not.” *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). The applicant in this case has not met his burden to establish that his parents were divorced prior to his 18th birthday. He therefore cannot establish, by a preponderance of the evidence, that he derived U.S. citizenship under section 321 of the former Act, 8 U.S.C. § 1432. The appeal will be dismissed.

ORDER: The appeal is dismissed.