

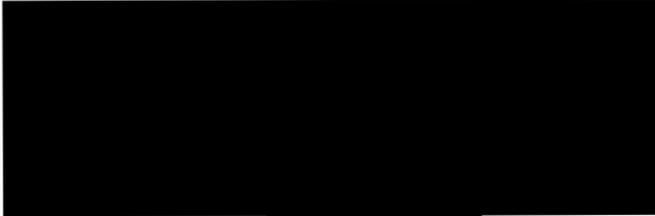
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



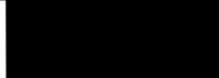
U.S. Citizenship
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FILE:



Office: BOSTON, MA

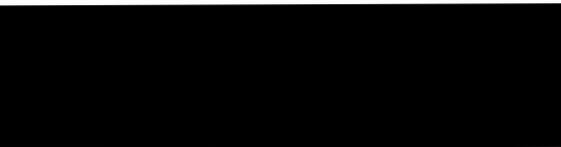
Date: **NOV 10 2009**

IN RE:



APPLICATION: Application for Certificate of Citizenship under Section 321 of the former Immigration and Nationality Act; 8 U.S.C. § 1432 (1980).

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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 \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Boston, 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 on January 23, 1980 in Ghana. The applicant's parents, as indicated on his birth certificate, are [REDACTED] and [REDACTED]. The applicant's parents were never married to each other. The applicant's mother became a U.S. citizen upon her naturalization on March 7, 1994, when the applicant was 14 years old. The applicant's father's citizenship is unknown. The applicant was admitted to the United States as a lawful permanent resident on November 26, 1995, when he was 15 years old. He presently seeks a certificate of citizenship claiming that he derived U.S. citizenship upon his mother's naturalization pursuant to section 321 of the former Immigration and Nationality Act (the Act), 8 U.S.C. § 1432 (1980).

The field office director denied the applicant's citizenship claim upon finding that he was legitimated by his father, and therefore not eligible to derive U.S. citizenship from his mother alone under section 321(a)(3) of the former Act, 8 U.S.C. § 1432 (1980).

On appeal, the applicant, through counsel, maintains that he was not legitimated under the law in Ghana. Specifically, the applicant states that the law in Ghana requires that a father care for the child's mother during pregnancy and sponsor a naming ceremony in order to legitimate a child. *See* Statement of the Applicant on Form I-290B, Notice of Appeal to the AAO. The applicant claims that his biological father did not care for his mother during pregnancy and did not participate in a naming ceremony. *See* Applicant's Brief in Support of Respondent's Derivative Naturalization at 4. The applicant further claims that his father passed away before or shortly after his birth. *Id.*

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. *See Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1029 (9th Cir. 2000) (citations omitted). The applicant was born in 1980. Although the Child Citizenship Act of 2000 (CCA) repealed former section 321 of the Act, the CCA does not apply to the applicant because he was over 18 years old when the CCA went into effect on February 27, 2001. *See* CCA § 104; *Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001) (holding that the CCA applies only to persons who were not yet 18 years old as of February 27, 2001). Section 321 of the former Act, 8 U.S.C. § 1432 (1980), is therefore applicable to this case.

Section 321 of the former Act, 8 U.S.C. § 1432 (1980), 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 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.

Section 101(c) of the Act, 8 U.S.C. § 1101(c), states, in pertinent part, that for Title III naturalization and citizenship purposes:

The term “child” means an unmarried person under twenty-one years of age and includes a child legitimated under the law of the child’s residence or domicile, or under the law of the father’s residence or domicile, whether in the United States or elsewhere . . . if such legitimation . . . takes place before the child reaches the age of 16 years . . . and the child is in the legal custody of the legitimating . . . parent or parents at the time of such legitimation.

The applicant has established that his mother naturalized and that he was admitted to the United States as a lawful permanent resident prior to his 18th birthday. At issue in this case is whether the applicant can derive U.S. citizenship solely through his mother as a child born out of wedlock whose paternity was not established by legitimation, in accordance with section 321(a)(3) of the former Act, 8 U.S.C. § 1432(a)(3) (1980).

The AAO notes that the applicant’s birth certificate indicates lists his father as [REDACTED]. The birth certificate further indicates that the applicant’s birth was registered by his father in 1986. The AAO notes the advisory opinion from the Library of Congress entitled “Children Born out of Wedlock and Legitimation in Ghana” dated June 3, 1994 (LOC 94-1737) which states that every child in Ghana is deemed to be legitimate and a father’s name on a child’s birth certificate reflects the father’s acknowledgment and legitimation of the child. The AAO further notes that the record in this case contains an October 15, 2009 letter from the Law Library of Congress ([REDACTED]) indicating that the law in Ghana makes no distinction between legitimate and illegitimate children, and that the name of a father in the birth register is evidence of paternity.

The AAO finds the applicant's father's registration of the applicant's birth, establishing his paternity, to be an affirmative legitimating act in this matter. The AAO notes that in *Wedderburn v. INS*, 215 F.3d 795, 802 (7th Cir. 2000), the court determined that, in proceedings involving a child who was legitimated by operation of law, the second prong of section 321(a)(3) of the Act "drops out." The court found that under section 321(a) of the Act, such "[l]egitimated children become citizens if both parents naturalize, if the surviving parent naturalizes, or if the parent having 'legal custody' naturalizes following the parents' 'legal separation.'" 215 F.3d at 802.

The applicant cites to decisions by the U.S. District Court for the District of Connecticut and the Ghanaian High Court. *See* Applicant's Brief in Support of Respondent's Derivative Naturalization at 3-5. These cases suggest that legitimation in Ghana can be accomplished by care of the mother during pregnancy and sponsoring of a naming ceremony, two methods of acknowledgment of a child. The AAO is not bound, or persuaded, by these decisions.¹ The AAO first notes the collective legitimation laws in Ghana described in the Library of Congress opinion. Further, the record currently before the AAO does not contain any evidence regarding the applicant's mother's care during pregnancy or the applicant's naming ceremony. The AAO also finds the listing of the applicant's father's name as the registrant six years after the applicant's birth suggests that the applicant's father was alive and involved in the applicant's life. It is well established that doubts concerning citizenship are to be resolved in favor of the United States. *INS v. Pangilinan*, 486 U.S. 875, 883-84 (1988); *see also United States v. Manzi*, 276 U.S. 463, 467 (1928) (stating that "citizenship is a high privilege, and when doubts exist concerning a grant of it ... they should be resolved in favor of the United States and against the claimant"). The AAO finds that the preponderance of the evidence shows that the applicant's paternity was established by legitimation under the law of Ghana.

The AAO notes "[t]here must be strict compliance with all the congressionally imposed prerequisites to the acquisition of citizenship." *Fedorenko v United States*, 449 U.S. 490, 506 (1981). The regulation at 8 C.F.R. § 341.2 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." *See Matter of E-M-*, 20 I&N Dec. 77 (Comm. 1989). The relevant evidence in this case demonstrates that the applicant was legitimated by his father because his father's name appears in his birth certificate as his father and registrant and the law in Ghana makes no distinction between legitimate and illegitimate children. The applicant therefore has not met his burden in this proceeding and his appeal will be dismissed.

ORDER: The appeal is dismissed.

¹ The AAO further notes that one of the cases, *Ankrah v. Gonzales*, 2007 U.S. Dist. LEXIS 63970 (D. Conn. July 21, 2007), was decided on the basis of a "law of the case" doctrine. The district judge in that case did not independently analyze the legitimation law in Ghana.