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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
and Immigration
Services

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FILE:

Office: PITTSBURGH, PA

Date:

SEP 22 2009

IN RE:

APPLICATION:

Application for Certificate of Citizenship under former section 321 of the Immigration and Nationality Act, 8 U.S.C. § 1432

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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, as required by 8 C.F.R. 103.5(a)(1)(i).

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The applicant moved to reconsider the denial of the Application for Certificate of Citizenship (Form N-600) by the Field Office Director, Pittsburgh, Pennsylvania. The Field Office Director denied the motion, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born in Canada on October 28, 1979. *See Birth Certificate for [REDACTED]*. The applicant's parents were married at the time of his birth. *See Marriage Certificate for [REDACTED] and [REDACTED]*, dated March 29, 1976. The applicant became a lawful permanent resident of the United States on September 28, 1989. *See Alien Registration Receipt Card*. The applicant's mother became a naturalized U.S. citizen on September 12, 1996. *See Certificate of Naturalization for [REDACTED]*. A Judgment of Divorce was entered by the Supreme Court of the State of New York, Kings County, on February 20, 1998. *See [REDACTED] Judgment of Divorce*. The applicant seeks a certificate of citizenship under former section 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432, claiming that he derived citizenship through his mother.

The Field Office Director determined that the applicant did not qualify for citizenship under former section 321 of the Act because his parents did not obtain a "legal separation" before the applicant's 18th birthday. *See Decision of the Field Office Director*, dated Nov. 17, 2008. The application was denied accordingly. On appeal, the applicant contends that prior to his 18th birthday, his parents were legally separated within the meaning of former section 321(a)(3) of the Act. *See Brief in Support of Appeal*, dated Dec. 4, 2008.

The AAO reviews these proceedings de novo. *See 5 U.S.C. 557(b)* ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.").

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). Former section 321(a) of the Act provided, in pertinent part:

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 . . . ; and if

(4) Such naturalization takes place while such child is under the age of eighteen 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 naturalized under clause (2) or (3) of this subsection, or thereafter begins to reside permanently in the United States while under the age of eighteen years.

8 U.S.C. § 1432 (repealed 2000). USCIS interprets the term legal separation “to require that the separation be pursuant to ‘proceedings . . . which terminate the marriage completely, as by absolute divorce, or which merely separate the parties without destroying the marital status.’” *Brissett v. Ashcroft*, 363 F.3d 130, 133 (2d Cir. 2004) (quoting INS Interp. 320.1(6)). Informal separation, “signify[ing] couples who decide to reside separately but do not invoke any legal or administrative process to formalize their decision,” is insufficient to confer derivative citizenship. *Id.* at 133 n.2. The applicant’s case arises in the jurisdiction of the United States Court of Appeals for the Third Circuit, which has held “that a legal separation for purposes of § 1432(a) occurs only upon a formal governmental action, such as a decree issued by a court of competent jurisdiction that, under the laws of a state or nation having jurisdiction over the marriage, alters the marital relationship of the parties.” *Morgan v. Attorney General*, 432 F.3d 226, 234 (3d Cir. 2005).

Here, the applicant contends that his parents separated in or around 1990 or 1991. *See Affidavit of [REDACTED]*, dated May 28, 2008 (indicating that [REDACTED] moved from the family home on January 20, 1990); *Affidavit of [REDACTED]*, dated July 10, 2007 (indicating that the applicant’s father moved from the home on July 10, 1991). Although the applicant claims that his parents “entered into a written agreement to separate on July 11, 1991,” *see Brief on Appeal*, the record contains no evidence of this alleged written agreement. The applicant’s mother became a naturalized U.S. citizen on September 12, 1996, when the applicant was 16 years old. *See Certificate of Naturalization, supra*.

The applicant claims that his mother initiated an action for a divorce on September 12, 1996, in Kings County, New York. *See Summons With Notice*. One copy of the Summons indicates that it was filed with the court on September 26, 1997. Another copy of the Summons contains no court filing date. The record contains an Affidavit of Defendant and Waiver in Action for Divorce, executed by the applicant’s father. *See Affidavit of Defendant*, dated October 14, 1996. The record also contains several copies of a document entitled Findings of Fact and Conclusions of Law, issued by a Special Referee of the Supreme Court of the State of New York, Kings County. *See Findings of Fact and Conclusions of Law*. One copy is undated, one copy is dated October 26 1997, and another copy is dated February 20, 1998. Court records indicate that a Note of Issue, placing the case on the court’s calendar, was filed on December 5, 1997. *See Case Detail for [REDACTED]* *supra* (available at <http://iapps.courts.state.ny.us/webcivil/FCASSearch>). A final Judgment of Divorce was issued on February 20, 1998. *See id.*; *see also Judgment of Divorce*.

The applicant correctly contends that an absolute or final judgment of divorce is not required to meet the definition of legal separation in former section 321(a)(3) of the Act. *See Matter of H-*, 3 I&N Dec. 742, 743-44 (BIA 1949) (defining “legal separation” to mean “either a limited or absolute divorce obtained through judicial proceedings”); *see also* INS Interp. 320.1(6). However, the applicant has failed to prove by a preponderance of the evidence that his parents were legally separated before his 18th birthday on October 28, 1997. First, the informal separation of his parents in 1990 or 1991 is insufficient to confer derivative citizenship. *See Brissett*, 363 F.3d at 133 n.2. Second, even if the initiation of divorce proceedings in New York could be considered evidence of the legal separation of the applicant’s parents within the meaning of former section 321(a)(3) of the Act, the applicant has not presented consistent and credible evidence regarding the date the Summons was prepared, served, or filed with the court. One copy of the Summons indicates that it was filed with the court on September 26, 1997, one year after it was allegedly prepared; another copy does not include a date of filing. Similarly, even if the court’s Findings of Fact and Conclusions of Law could constitute evidence of the legal separation of the applicant’s parents, the date that this document was prepared and filed with the court is in question. As noted above, one copy of this document is undated, one copy is dated October 26, 1997, two days before the applicant’s 18th birthday, and one copy is dated February 20, 1998, the date of the final Judgment of Divorce. Additionally, the stamped certification by court clerk indicates that the original Findings of Fact and Conclusions of Law was filed with the court on February 24th, which is inconsistent with the applicant’s claim that the document was dated October 26, 1997. Finally, the AAO notes the inconsistency between the date of the formal action placing the case on the court’s calendar—December 5, 1997—and the applicant’s current claim that the court’s Findings of Fact and Conclusions of Law was filed on October 26, 1997, *before* the action was placed on the court’s calendar. *See Case Detail, supra*.

A person may only obtain citizenship in strict compliance with the statutory requirements imposed by Congress. *INS v. Pangilinan*, 486 U.S. 875, 884 (1988). Moreover, “it has been universally accepted that the burden is on the alien applicant to show his eligibility for citizenship in every respect,” and that any doubts concerning citizenship are to be resolved in favor of the United States. *Berenyi v. District Director, INS*, 385 U.S. 630, 637 (1967); *see also* 8 C.F.R. § 341.2(c) (“The burden of proof shall be upon the claimant . . . to establish the claimed citizenship by a preponderance of the evidence.”). Here, the applicant has not shown by a preponderance of the credible evidence that his parents were legally separated within the meaning of former section 321(a) of the Act before he turned 18 years old. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.