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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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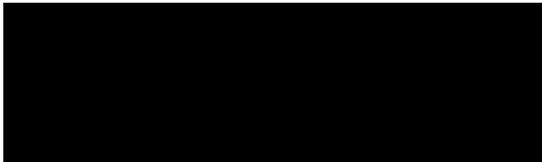
FILE:  Office: NEW YORK CITY, NEW YORK

Date: **JUL 30 2010**

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:

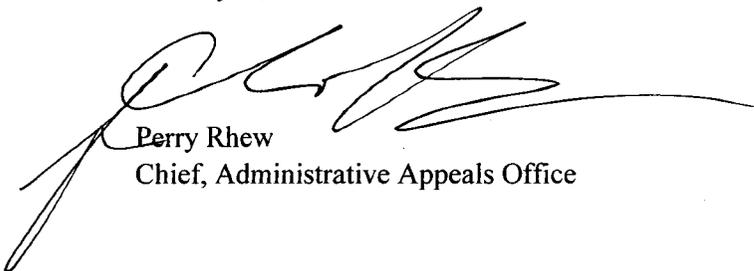


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Application for Certificate of Citizenship (Form N-600) was denied by the District Director, New York City, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born in Haiti on September 22, 1972. On February 11, 1986, the applicant was adopted in New York by [REDACTED]. The applicant's adoptive mother became a naturalized U.S. citizen on December 12, 1989. On February 20, 1990, the former Immigration and Naturalization Service granted the applicant lawful permanent residency. 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 adoptive mother.

The director determined that the applicant failed to establish eligibility for derivative citizenship under former section 321 of the Act because he was not a lawful permanent resident at the time his adoptive mother naturalized. *See Decision of the Director*, dated Mar. 9, 2009. The director also determined that the applicant was not eligible for citizenship under any other provision of the Act, and denied the application accordingly. *Id.* On appeal, the applicant contends through counsel that he meets the requirements for derivative citizenship under former section 321 of the Act. *See Form I-290B, Notice of Appeal*, filed Apr. 8, 2009; *Brief in Support of Appeal*. Additionally, the applicant claims for the first time on appeal that he derived citizenship because he is the biological child of his adoptive mother. *Id.*

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. *Minasyan v. Gonzales*, 401 F.3d 1069, 1075 (9th Cir. 2005); *accord Jordon v. Attorney General*, 424 F.3d 320, 328 (3d Cir. 2005). Here, the director correctly determined that section 320 of the Act, 8 U.S.C. § 1431, as amended by the Child Citizenship Act of 2000 (CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), is inapplicable to this case because the applicant was over 18 years old on the effective date of the CCA. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). Former section 321 of the Act, in effect at the time the applicant became a lawful permanent resident in 1990, is applicable in this case.

Former section 321 of the Act provided, in pertinent part:

(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 such child is unmarried and 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 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 eighteen 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 or parents, in the custody of his adoptive parent or parents, pursuant to a lawful admission for permanent residence.

Here, the director correctly determined that the applicant did not satisfy the requirements of former section 321(b) of the Act because he was not “residing in the United States . . . pursuant to a lawful admission for permanent residence” at the time of his adoptive mother’s naturalization. Former section 321(b) of the Act; *see also Smart v. Ashcroft*, 401 F.3d 119, 121 (2d Cir. 2005) (recognizing that foreign-born adopted children must satisfy the relevant statutory requirements before the naturalization of the adoptive parent). Accordingly, the applicant did not derive citizenship from his adoptive mother.

The applicant contends for the first time on appeal that he derived citizenship under former section 321(a) of the Act because he is actually the biological son, born out of wedlock, to his adoptive mother. In support of this contention, the applicant submits an affidavit from [REDACTED], his adoptive mother, stating, in relevant part:

On September 22, 1972, I gave birth to [REDACTED] in the Republic of Haiti. However, his birth certificate does not have my name as the mother; in fact, in error, it has my mother’s name as the mother of [REDACTED]

On February 11, 1986, I adopted [REDACTED] in the State of New York in an effort to resolve the problem of not having my name on his birth certificate from Haiti.

Sworn Statement of [REDACTED] dated May 13, 2009. The applicant also submitted a copy of a one-page genetic test report showing a 99.98% probability of maternity. *See Orchid Cellmark Genetic Test Report*, dated May 7, 2009. Finally, counsel asserts for the first time on appeal that the applicant’s birth father was [REDACTED]. *See Brief on Appeal* at 1; *see also Certificate of Naturalization for [REDACTED]; Petition for Naturalization (Form N-495) for [REDACTED]*

Here, the applicant has not established, by a preponderance of credible evidence that he was born out of wedlock to his adoptive mother. First, the applicant's Haitian birth certificate indicates that the applicant is the legitimate son of married parents [REDACTED] and [REDACTED]. See *Birth Certificate of [REDACTED]*, registered Oct. 10, 1972. Although the applicant's adoptive mother states that her mother's name was erroneously placed on the applicant's birth certificate, see *Sworn Statement of [REDACTED]* she fails to explain the circumstances surrounding the alleged mistake, or why a correction to the applicant's birth certificate was not made. Second, a notation on the relative visa petition (Form I-130) filed by [REDACTED] on behalf of [REDACTED] indicates that the applicant is the brother, not son, of Marie Francoise Laraque. See *Form I-130*, filed Sep. 7, 1982. Third, the applicant's adoptive mother did not list the applicant as her child on her application for an immigrant visa. See *Application for Immigrant Visa*, dated June 3, 1983. Fourth, the one-page copy of a genetic test report is not conclusive because the original test results have not been communicated directly from the laboratory to U.S. Citizenship and Immigration Services. Finally, the applicant has presented no evidence to support his claim that he is the biological son of Pierre Fouche. See *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (noting that statements or assertions by counsel are not evidence); see also *Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) ("Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings.").

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). Additionally, it is incumbent on the applicant to resolve any inconsistencies in the record. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Here, the applicant has not established by a preponderance of the credible evidence that he is eligible for derivative citizenship pursuant to former section 321 of the Act. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.