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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:



Date:

JUN 17 2010

IN RE:



APPLICATION:

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

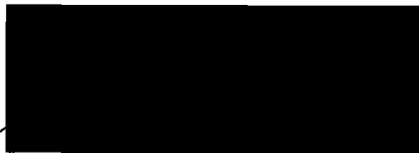
ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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.

Thank you,



Chief, Administrative Appeals Office

DISCUSSION: The Application for Certificate of Citizenship (Form N-600) was denied by the Field Office Director, Miami, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant was born in Dominica on December 16, 1965. The applicant's parents were married at the time of her birth. The applicant was admitted to the United States as a lawful permanent resident on April 9, 1969. The applicant's mother became a naturalized U.S. citizen on September 19, 1975. [REDACTED]. 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 she derived citizenship through her mother.

The director determined that the applicant failed to establish eligibility for citizenship under section 320 of the Act, 8 U.S.C. § 1431 and denied the application accordingly. *See Decision of the Director*. On appeal, the applicant presents additional evidence in support of her claim, including copies of her parents' divorce judgment and her mother's naturalization certificate.

Because the applicant was born abroad, she is presumed to be an alien and bears the burden of establishing her 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 AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). 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 (3rd Cir. 2005). In this case, the director adjudicated the application under section 320 of the Act, as amended by the Child Citizenship Act of 2000 (CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000). The applicant was over 18 years old on the effective date of the CCA, however, and the amended section 320 of the Act is inapplicable to her case. [REDACTED], 23 I&N Dec. 153 (BIA 2001). Former section 321 of the Act is therefore applicable in this case.

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 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 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.

The order in which the requirements are fulfilled is irrelevant, as long as all requirements are satisfied before the applicant's eighteenth birthday. *Matter of Baires-Larios*, 24 I&N Dec. at 470.

Here, the applicant satisfied the requirements for derivative citizenship set forth in former section 321(a) of the Act before her eighteenth birthday. First, the applicant was admitted to the United States as a lawful permanent resident when she was three years old. Second, the applicant's mother became a naturalized U.S. citizen when the applicant was nine years old. Third, the applicant's parents divorced in 1981, when the applicant was 15 years old, and the divorce decree placed the applicant in her mother's legal custody.

The applicant bears the burden of proof to establish her eligibility for citizenship under the Act by a preponderance of the evidence. *See Id.* at 468; 8 C.F.R. § 341.2(c). Here, the applicant has established by a preponderance of the evidence that she met all of the conditions for the automatic derivation of U.S. citizenship pursuant to former section 321 of the Act before her eighteenth birthday. Accordingly, the appeal will be sustained, the decision of the director will be withdrawn, and the matter will be returned to the director for the issuance of a certificate of citizenship.

ORDER: The appeal is sustained. The matter is returned to the Miami Field Office for issuance of a certificate of citizenship.