

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

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**

E2



FILE: [REDACTED]

Office: SAN DIEGO, CALIFORNIA

Date:

JUN 30 2010

IN RE: [REDACTED]

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.

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, San Diego, California, 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 Romania on November 18, 1982. The applicant's parents were married at the time of his birth. The applicant was admitted to the United States as a refugee on August 27, 1991. On December 19, 1992, the former Immigration and Naturalization Service approved the applicant's status as a lawful permanent resident of the United States as of the date of the applicant's arrival. The applicant's mother became a naturalized U.S. citizen on July 28, 1999. The applicant's father is not a U.S. citizen. 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 director determined that the applicant failed to establish eligibility for derivative citizenship because, among other things, the applicant was not in his mother's sole custody, and because his parents did not divorce until after the applicant's eighteenth birthday. *See Decision of the Director*, dated Mar. 17, 2009. The application was denied accordingly. *Id.* On appeal, the applicant contends that he was in his mother's sole custody when she naturalized. *See Form I-290B, Notice of Appeal*, filed Apr. 16, 2009. In support of the appeal, the applicant submitted letters from his mother and sister indicating that the applicant's mother was the sole provider and caretaker for the family. *See Letter from* [REDACTED] dated May 14, 2009; *Letter from* [REDACTED] dated May 15, 2009.

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). In this case, the director adjudicated the application under 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). However, the applicant was over 18 years old on the effective date of the CCA, and the amended section 320 of the Act is inapplicable to his case. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). Former section 321 of the Act, in effect at the time of his mother's naturalization in 1999, is 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 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.

The term legal separation means “either a limited or absolute divorce obtained through judicial proceedings.” *Afeta v. Gonzales*, 467 F.3d 402, 406 (4th Cir. 2006) (affirming the Board of Immigration Appeals’ construction of the term legal separation as set forth in *Matter of H*, 3 I&N Dec. 742, 744 (BIA 1949)) (internal quotation marks omitted); *see also Minasyan v. Gonzales*, 401 F.3d at 1076 (stating that term legal separation refers to a separation recognized by law; considering the law of California, which had jurisdiction over the applicant’s parents’ marriage).

Here, the applicant satisfied several of the requirements for derivative citizenship set forth in former section 321(a) of the Act before his eighteenth birthday. Specifically, the applicant was admitted to the United States as a lawful permanent resident when he was eight years old, and the applicant’s mother became a naturalized U.S. citizen when he was sixteen years old. However, the applicant has not shown that his parents were legally separated while he was under the age of 18 years, as required by section 321(a)(3) of the Act. Rather, during an interview regarding his Form N-600 on March 11, 2009, the applicant stated that his parents were separated in 2003 and divorced in 2007, when the applicant was over 18 years old. Consequently, the applicant did not derive citizenship through his mother under former section 321(a)(3) of the Act.

The applicant is also ineligible to derive citizenship under any other subsection of former section 321(a) of the Act. Because his father did not naturalize, he cannot derive citizenship under former section 321(a)(1) of the Act. The record does not indicate that the applicant’s father was deceased prior to the applicant’s eighteenth birthday and he is consequently ineligible to derive citizenship from his mother under former section 321(a)(2) of the Act. The applicant is also ineligible to derive citizenship through his mother under the second clause of former section 321(a)(3) of the Act because he was born in wedlock and his paternity was established at birth.

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). Here, the applicant has not established that he met all of the conditions for the automatic derivation of U.S. citizenship pursuant to former section 321 of the Act before his eighteenth birthday. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.