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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

[redacted]

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FILE: [redacted] Office: HOUSTON, TEXAS Date: NOV 29 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 (1993)

ON BEHALF OF PETITIONER:

[redacted]

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 $630. 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, Houston, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born to unwed parents in Ethiopia (now Eritrea) on April 27, 1978. The applicant's mother became a naturalized U.S. citizen on May 9, 1991. The applicant was admitted to the United States as a lawful permanent resident on September 19, 1993. The applicant seeks a Certificate of Citizenship under former section 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432 (1993), claiming that he derived citizenship through his mother.

The director determined that the applicant did not qualify for citizenship under former section 321 of the Act because he was legitimated under the laws of Ethiopia and Eritrea. *See Decision of the Director*, dated October 19, 2009. The application was denied accordingly. *Id.* On appeal, the applicant contends through counsel that his paternity was not established by legitimation under Eritrean law, and that he derived U.S. citizenship through his mother. *See Form I-290B, Notice of Appeal*, filed Nov. 19, 2009; *Brief in Support of Appeal.*

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. *See Minasyan v. Gonzales*, 401 F.3d 1069, 1075 (9th Cir. 2005); *accord Jordon v. Attorney General*, 424 F.3d 320, 328 (3d Cir. 2005). Former section 321 of the Act, in effect at the time of the applicant's admission to the United States in 1993, 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 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's mother became a naturalized U.S. citizen in 1991, when the applicant was 13 years old, and the applicant was admitted to the United States as a lawful permanent resident in 1993, when he was 15 years old. The applicant contends that he satisfied the requirements set forth in former section 321(a)(3) of the Act because he was born out-of-wedlock and his paternity has not been established by legitimation.

The record reflects that the applicant was born on April 27, 1978, to [redacted] and [redacted] *See Birth Certificate*, dated Jan. 28, 1993. Although the applicant's parents were not married, the applicant's father's name appears on the applicant's birth certificate and the applicant's certificate of baptism. *Id.; Certificate of Baptism*. The applicant does not claim, nor does any evidence in the record suggest, that [redacted] is not his birth father.

Under the civil code of Ethiopia, which was adopted with certain amendments by Eritrea after 1991, no distinctions are made between children born within marriage and those born outside of marriage. *See Letter from the Law Library of Congress*, dated Sep. 30, 2009 (LL File No. [redacted] (copy attached).[1](Although counsel contends that under Eritrean customary law only the biological father can legitimate a child by claiming it as his child, *Brief on Appeal* at 3, the evidence in the record does not support this claim. Specifically, the Library of Congress Legal Research Guide to Eritrea referenced by counsel states that "customary law is not recognized as an official source of law in Eritrea," and the research guide does not discuss the requirements for legitimation.

Because neither Ethiopia nor Eritrea distinguishes between children born in and out of wedlock, the applicant is deemed the legitimate child of his birth father. *See Matter of Bueno-Almonte*, 21 I&N Dec. 1029, 1032 (BIA 1997) ("A legitimated child is . . . the biological offspring of unmarried parents, who, by some act, has been placed in the same legal position the child would have been in if his or her parents had been married at the time of the child's birth."). Because the applicant's paternity has been established by legitimation, he did not derive citizenship through his mother under former section 321(a)(3) of the Act.

Finally, counsel contends that "there is an equal protection violation between children born to unwed fathers and children born to unwed mothers whose parents later naturalize before their 18th

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[1] The letter references the Civil Code of the [redacted], the Transitional Civil Code of Eritrea, and Eritrean Proclamation No. 1 of 1991 (page 26).

birthday." *Brief on Appeal* at 3. Because section 321(a)(3) of the Act provides for derivative citizenship of an out-of-wedlock child through the naturalization of the mother, but not through the naturalization of the father, it does not appear that the applicant could be harmed by the gender-based distinctions in the statute. Regardless, the AAO, like the Board of Immigration Appeals, lacks jurisdiction to rule on the constitutionality of the Act and regulations that U.S. Citizenship and Immigration Services (USCIS) administers. *See, e.g., Matter of Fuentes-Campos*, 21 I&N Dec. 905, 912 (BIA 1997). *See also United States v. Nixon*, 418 U.S. 683, 695-96 (1974) (holding that government officials are bound to adhere to the governing statute and regulations).

The applicant bears the burden of proof to establish his eligibility for citizenship under the Act. Section 341(a) of the Act, 8 U.S.C. § 1452(a); 8 C.F.R. § 341.2(c). Here, the applicant has not established by a preponderance of the evidence 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.

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DIRECTORATE OF LEGAL RESEARCH
Eastern Law Division
Western Law Division

September 30, 2009
[redacted]

Dear Ms. [redacted]

In response to your request of September 24, 2009, for information on whether under the laws of Ethiopia (from 1978 through 1991) and/or Eritrea (from 1991 through 1994), a distinction was made between children born within marriage and those born outside of marriage, we are providing the following information.

During the period of 1978 through 1991, Eritrea was part of Ethiopia. Thus the applicable law in both Ethiopia and Eritrea was the CIVIL CODE OF THE EMPIRE OF ETHIOPIA, NO. 156, GAZETTE EXTRA ORDINARY [redacted] Printing Press, 1960) (official source) (the Civil Code). Since its independence from Ethiopia in 1991, Eritrea has adopted transitional laws. The Transitional Civil Code of Eritrea consists of the Civil Code, and amendments made by the Eritrean government through the Eritrean Proclamation No. 1 and 2 of 1991 (official source).

Both Ethiopia and Eritrea make no distinction between children born within marriage and those born outside of marriage. Under the Civil Code, children born outside of marriage have the same rights as those born within a marriage. For example, with regard to the eligibility to inherit, the law expressly states that "[t]he legitimacy or illegitimacy of the deceased or of the heir shall not affect the ascertainment of the heirs or the value of the portion of each of them" (the Civil Code, art. 836(1)). The same law was applied in Eritrea until 1991. While Eritrea has made amendments to the Ethiopian Civil Code since its independence, it has maintained the provisions of the Civil Code that are designed to guarantee the equal treatment of children born outside of marriage (*see* Eritrean Proclamation No. 1(page No. 26) of 1991 (official source)).

If you have further questions concerning this issue, please call me at [redacted] or email me at [redacted] We hope this information is helpful.

Sincerely,

[redacted]
Foreign Law Specialist