

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:



Office: EL PASO, TEXAS

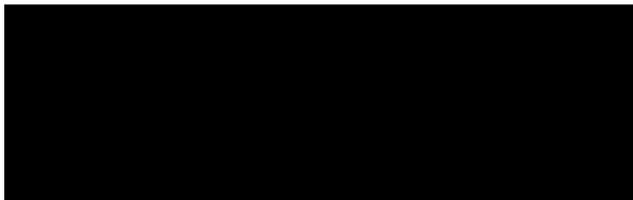
Date: **SEP 22 2010**

IN RE:



APPLICATION: Application for Certificate of Citizenship under former section 321 of the Immigration and Nationality Act, 8 U.S.C. § 1432 (1995)

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.

Thank you,

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

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

The record reflects that the applicant was born to unwed parents in El Salvador on September 17, 1978. The applicant was admitted to the United States as a lawful permanent resident on May 4, 1989. The applicant's mother became a naturalized U.S. citizen on July 13, 1995. The applicant seeks a Certificate of Citizenship under former section 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432 (1995), 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 El Salvador. *See Decision of the Director*, dated Sep. 17, 2009. The application was denied accordingly. *Id.* On appeal, the applicant contends through counsel that his paternity was not established by legitimation, and that he derived U.S. citizenship through his mother. *See Form I-290B, Notice of Appeal*, filed Oct. 20, 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 mother's naturalization in 1995, 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 satisfied the requirements for derivative citizenship set forth in former section 321(a) of the Act before his eighteenth birthday. First, the applicant was admitted to the United States as a lawful permanent resident in 1989, when he was ten years old. *See* former section 321(a)(5) of the Act. Second, the applicant's mother became a naturalized U.S. citizen in 1995, when the applicant was sixteen years old. *See* former section 321(a)(4) of the Act.

Third, the preponderance of the evidence demonstrates that the applicant meets the requirements of 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 September 17, 1978, to [REDACTED]. *See Birth Certificate of [REDACTED]*. The immigration records of the applicant and of the applicant's mother consistently show that [REDACTED] remained unmarried until her marriage to the applicant's stepfather on April 25, 1987. *See California Marriage Certificate for [REDACTED]*; *Form I-130 Petition for Alien Relative* (filed by [REDACTED] on behalf of [REDACTED] and indicating no prior marriages); *Form N-400 Application for Naturalization* (filed by [REDACTED] and indicating a single marriage to [REDACTED]).

Although [REDACTED] is listed as the applicant's father on his birth certificate, the applicant claims that [REDACTED] is not his biological father. *See Brief in Support of Appeal*. In support of this assertion, the applicant submits a letter from his mother stating that apart from a "one night stand," she never saw the applicant's biological father again. *See Letter from [REDACTED]* dated Nov. 4, 2009. [REDACTED] also states that she was afraid that the applicant "would not have a father's last name," and that her high school friend [REDACTED] offer[ed] to give [her] son his last name." *Id.* [REDACTED] also states that he is not the applicant's biological father, and that he allowed [REDACTED] to use his last name on the applicant's birth certificate "in order to give her safety." *Letter from [REDACTED]* dated Nov. 19, 2009. Additionally, the applicant and [REDACTED] submitted the results of a DNA test by an AABB accredited parentage testing facility, which indicate a zero percent probability of paternity. *See Results of DNA Analysis*, dated Nov. 30, 2009.

The director correctly found that El Salvador has eliminated all distinctions between children born in and out of wedlock. *See Matter of Moraga*, 23 I&N Dec. 195, 198-99 (BIA 2001) (en banc). Accordingly, "all natural children are deemed to be the legitimate or legitimated offspring of their natural father from the time that [El Salvador's] laws . . . changed." *Id.* at 199. However, the applicant cannot qualify as the legitimated child of [REDACTED] unless the record establishes that the applicant is [REDACTED] biological child. *Id.* at 197 (citing the inherent prerequisite to legitimation of a biological, father-child relationship); *see also Matter of Bueno*, 21 I&N Dec. 1029, 1032 (BIA 1997)

(stating the requirement that a “legitimated child is [firstly] the biological offspring of unmarried parents.”). Here, the preponderance of the evidence shows that the applicant is not biological child. See *Letter from* ; *Letter from* ; *Results of DNA Analysis*. Because the applicant’s paternity has not been established by legitimation, he meets the requirements under former section 321(a)(3) of the Act.

The applicant bears the burden of proof to establish his eligibility for citizenship under the Act. 8 C.F.R. § 341.2(c). Here, the applicant has 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 prior to his 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 action in accordance with this decision.

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