

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
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

E₂

[Redacted]

Date:

OCT 25 2011

Office: NEWARK, NJ

File:

[Redacted]

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 APPLICANT:

[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 Field Office Director, Newark, New Jersey, 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 Ecuador on May 18, 1975. The applicant's mother became a naturalized U.S. citizen on February 16, 1988. The applicant's father was born in Ecuador and is not a U.S. citizen. The applicant was admitted to the United States as a lawful permanent resident on July 20, 1992. 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 under former section 321 of the Act, and denied the application accordingly. *See Decision of the Field Office Director*, dated June 21, 2011. On appeal, counsel contends that as the applicant's parents were unmarried, he was not legitimated and he can therefore derive citizenship through his mother alone. *See Counsel's Brief*, dated September 16, 2011.

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 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 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 order in which the requirements are fulfilled is irrelevant, as long as all requirements are satisfied before the applicant's 18th birthday. *Matter of Baires-Larios*, 24 I&N Dec. at 470.

On appeal, counsel contends that the applicant qualifies for derivative citizenship based on the naturalization of his mother because he was born out of wedlock and not legitimated

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 seventeen years old, and the applicant's mother became a naturalized U.S. citizen when he was twelve years old. However, while the applicant was born out of wedlock, the applicant was legitimated under Ecuadorian law and cannot derive citizenship under section 321(a)(3) of the Act. *Matter of Campuzano*, 18 I&N Dec. 390 (BIA 1983).

Counsel contends that the applicant's biological father never legally or otherwise recognized the applicant as his son and that, on January 20, 2011, the immigration judge reopened the respondent's immigration case, vacated the order of removal and specifically made a judicial determination that the applicant had derived U.S. citizenship through his mother.

U.S. Citizenship and Immigration Services (USCIS) is not bound by a determination of the Executive Office for Immigration Review (EOIR) that an applicant is a U.S. citizen. An immigration judge may credit an individual's citizenship claim in the course of terminating removal proceedings for lack of jurisdiction because the government has not established the individual's alienage by clear and convincing evidence. *See* 8 C.F.R. § 1240.8(a), (c) (prescribing that the government bears the burden of proof to establish alienage and removability or deportability by clear and convincing evidence). The immigration judge's decision regarding citizenship, however, is not binding on USCIS. USCIS retains sole jurisdiction to issue a certificate of citizenship and the agency's decision is reviewable only by the federal courts, not EOIR. Sections 341(a) and 360 of the Act, 8 U.S.C. §§ 1452(a), 1503; 8 C.F.R. 341.1; *see also Minasyan v. Gonzalez*, 401 F.3d at 1074 n.7 (noting that the immigration court had no jurisdiction to review the agency's denial of Minasyan's citizenship claim). In addition, while the government bears the burden of proof to establish an individual's alienage in removal proceedings before EOIR; in certificate of citizenship proceedings before USCIS, the applicant bears the burden of proof to establish the claimed citizenship by a preponderance of the evidence. Section 341(a) of the Act, 8 U.S.C. § 1452(a); 8 C.F.R. § 341.2(c).

Under the Civil Code of Ecuador, as reinstated on August 7, 1970, there is no distinction between legitimate and illegitimate children and all children have equal rights under the law. *Matter of Campuzano, Id.* All children born in Ecuador after August 7, 1970, or who were under 18 years of age on that date and who were acknowledged by one parent are considered legitimate children. According to a March 1997 advisory opinion from the Library of Congress (LOC 97-2018), under the Civil Code of Ecuador, children born out of wedlock may be recognized by one or both parents by the personal declaration of such recognition in the birth record of the child. While counsel contends that the only evidence that contains the applicant's father's name is a computer printed

Birth Certificate and that the applicant's father's name only appears on the record because the applicant's mother provided it at the time of registry and it does not reflect that the applicant's father gave it as recognition of paternity, the birth certificate submitted by the applicant is a [REDACTED] (short-form birth certificate) which was issued on July 20, 2001, and is not an [REDACTED] (long-form birth certificate). An [REDACTED] is a full copy of the original record at the time of registration, rather than a computerized summarization of the birth record. The record contains an [REDACTED] for the applicant which was issued on August 11, 1977. The [REDACTED] reflects the applicant's father's information and is also signed by both the applicant's mother and the applicant's father.¹ The applicant's father, therefore, officially acknowledged the applicant as his child under Ecuadorian law and the applicant was legitimated by his father at the time his birth was registered. Consequently, the applicant was legitimated and cannot derive citizenship through his mother alone 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.

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.

¹ The immigration judge's decision makes it clear that the [REDACTED] was the only record before him at the time he rendered his decision.