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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

[redacted]

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Date: AUG 16 2012 Office: NEW YORK, NY 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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630, or a request for a fee waiver. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 Field Office Director (the director), New York, New York, denied the Application for Certificate of Citizenship (Form N-600) and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born out-of-wedlock in Ecuador on September 25, 1972. The applicant was admitted to the United States as a lawful permanent resident on September 9, 1982. The applicant's mother became a naturalized U.S. citizen on October 5, 1988. 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 found that the applicant had failed to establish that he met the requirements of former section 321 of the Act because, while the applicant was born out-of-wedlock, he was legitimated by his non-U.S. citizen father and failed to establish that his mother had legal custody after a legal separation of his parents. The application was denied accordingly. *See Field Office Director's Decision,* dated November 18, 2011. On appeal, counsel contends that the director erred as a matter of law because the applicant was not legitimated under Ecuadorian law. *See Brief,* dated January 13, 2012.

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
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> (4) Such naturalization takes place while such child is unmarried and under the age of eighteen years; and
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> (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 eighteenth 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.

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 nine years old, and the applicant's mother became a naturalized U.S. citizen when he was sixteen years old. However, while the applicant was born out of wedlock, the applicant has failed to establish that he was not legitimated under Ecuadorian law and he therefore 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, that on July 18, 1997, the immigration judge made a judicial determination that the applicant had derived U.S. citizenship through his mother, and that on February 26, 1999, the Board of Immigration Appeals (BIA) left the findings of fact undisturbed.[1]

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, as 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, when applying for a certificate of citizenship 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, Supra.* 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. Counsel contends that the applicant's father did not acknowledge the applicant; the applicant's father provides a statement indicating that he did not register the applicant's birth and his name only appears on the record

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[1] The BIA determined that the applicant had failed to establish that he was a U.S. citizen and remanded the matter to the immigration judge.

because the applicant's mother provided it and his identity card at the time of registry; and the immigration judge found that the applicant's father's signature and personal statement were not contained on the birth certificate, thereby failing to render the registration of birth a personal acknowledgement by the applicant's father. However, the record only contains computer-printed and type-written Birth Certificates on which the applicant's father's name appears. The birth certificates submitted by the applicant are "Partida de Nacimiento" (short-form birth certificates) which were issued on August 6, 2010, September 12, 1980 and December 23, 1976, and are not "Inscripcion de Nacimiento" (*long-form birth certificate*).[2] All three of the Partida de Nacimiento list the applicant's father's name. Two of the Partida de Nacimiento indicate that the applicant's father was the person who requested the registration of the applicant's birth. The record also contains a Baptism Certificate which indicates that the applicant is the legitimate son of the applicant's father and mother. The preponderance of the evidence establishes that the applicant's father 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. The applicant has failed to provide appropriate documentation to overcome the director's decision. Consequently, the applicant 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.

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[2] An Inscripcion de Nacimiento is a full copy of the original record at the time of registration, rather than a computerized or type-written summarization of the birth record.