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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: FEB 08 2012 Office: PHILADELPHIA 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 (1980)

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 $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 director of the Philadelphia Field Office and the Administrative Appeals Office (AAO) dismissed the subsequent appeal. The AAO affirmed the dismissal upon granting the applicant's first motion and again upon dismissal of his second motion. The matter is now before the AAO on a third motion to reopen and reconsider. The motion to reopen will be granted. The appeal will remain dismissed and the application will remain denied.

Pertinent Facts and Procedural History

The applicant was born in the Dominican Republic on May 21, 1962 to [redacted]. The applicant's biological parents never married each other. The applicant was admitted to the United States as a lawful permanent resident in 1967 and his father married [redacted] in 1968. The applicant's stepmother became a naturalized citizen of the United States in 1973 and the applicant claims that his father naturalized in 1998. The applicant seeks a Certificate of Citizenship under former section 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432 (1980), claiming that he derived citizenship through his stepmother who adopted him.

The director determined that the applicant was ineligible to derive citizenship through his stepmother because the record lacked any evidence that she adopted him and the law does not allow derivation through a stepparent. The AAO dismissed the applicant's appeal on the same basis and twice affirmed its decision upon the applicant's two prior motions.

With the present motion, the applicant submits a copy of the marriage certificate of his father and stepmother and his stepmother's affidavit dated August 13, 2011 in which she briefly asserts that the applicant was under her custody from his arrival in the United States in 1967 until 1992. The applicant's submission meets the requirements for a motion to reopen, but not a motion to reconsider. *Compare* 8 C.F.R. §§ 103.5(a)(2) *with* 103.5(a)(3).

The AAO reviews these proceedings *de novo*. *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 new evidence submitted on motion fails to establish the applicant's eligibility and the appeal will remain dismissed for the following reasons.

Applicable Law

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). Former section 321 of the Act, as in effect in 1980 when the applicant turned 18, is applicable in this case[1] and stated, in pertinent part:

[1] 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), is inapplicable to this case because the applicant was over 18 years old on the effective date of the CCA. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001).

(a) 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.

(b) Subsection (a) of this section shall apply to a child adopted while under the age of sixteen years who is residing in the United States at the time of naturalization of such adoptive parent or parents, in the custody of his adoptive parent or parents, pursuant to a lawful admission for permanent residence.

Section 101(c)(1) of the Act, 8 U.S.C. § 1101(c)(1) (as in effect in 1980), defined the term "child" in former section 321 of the Act as follows, in pertinent part:

The term "child" means an unmarried person under twenty-one years of age and . . . except as otherwise provided in sections 320 and 321 of title III, a child adopted in the United States, if such . . . adoption takes place before the child reaches the age of 16 years . . . and the child is in the legal custody of the . . . adopting parent or parents at the time of such . . . adoption.

The applicant is ineligible to derive citizenship through his father under former section 321(a)(1) of the Act. The applicant states that his father naturalized in 1998, after the applicant turned 18, although the applicant submitted no evidence of his father's citizenship and U.S. Citizenship and Immigration Services (USCIS) records do not show that the applicant's father has naturalized. None of the applicant's parents have died, hence, former section 321(a)(2) of the Act is inapplicable. The first clause of former subsection 321(a)(3) of the Act also does not apply to the applicant because his biological parents were never married and consequently never legally separated; and the applicant states that his father and stepmother are still married.

The applicant is ineligible to derive citizenship through his stepmother under the second clause of former subsection 321(a)(3) of the Act for two reasons.[2] First, the record indicates that the applicant was not residing with his stepmother at the time of her naturalization in 1973, as required for him to derive citizenship through her under former subsection 321(b) of the Act. In these proceedings, the applicant asserts that he was raised and adopted by his stepmother. However, the record contains a Presentence Investigation Report dated March 3, 2004, which conveys the applicant's statement that he moved to the United States when he was five years old with his grandmother, who raised him. According to the report, the applicant lived with his grandmother and grandfather in Brooklyn, New York for three years and then they all moved to Florida. The report further states that the applicant only resided with his father and stepmother for a few months when he was in his twenties (after 1982). The applicant's July 19, 1967 immigrant visa application also stated that he was coming to the United States to join his father and his grandmother. A May 27, 1966 letter accompanying the visa application and signed by the applicant's father and grandparents further confirmed that the applicant's grandmother would care for him. The applicant's Presentence Investigation Report and immigrant visa documents contradict the applicant's claim that he was adopted and raised by his stepmother as a child. The applicant's stepmother's August 13, 2011 affidavit submitted on motion does not address this discrepancy and does not outweigh the preponderance of the evidence that the applicant was not, in fact, residing with his stepmother at the time of her naturalization in 1973.

Second, the Act does not provide for derivation of U.S. citizenship through a stepparent. *See Matter of Guzman-Gomez*, 24 I&N Dec. 824, 827-28 (BIA 2009) (discussing the legislative history demonstrating that stepchildren do not derive citizenship through the naturalization of a stepparent). The applicant could only have derived citizenship through his stepmother if she adopted him in the United States before his sixteenth birthday while he was in her legal custody. Sections 101(c)(1) and 321(b) of the Act, 8 U.S.C. §§ 1101(c)(1), 1432(b) (1980). The record lacks any evidence of such an adoption. On motion, the applicant resubmits a certification executed by his stepmother on October 20, 2010 in the Dominican Republic. The applicant's stepmother stated, "I have adopt [sic] the minor [the applicant], when he was 5 years old." The record also contains an affidavit executed by his biological mother on March 1, 2010 in the Dominican Republic in which she affirmed that she gave the applicant to his father and his stepmother when he was five years old. The applicant previously submitted an affidavit executed by his stepmother on July 21, 2008 in which she stated that the applicant was in her custody and the care and control of her and the applicant's father from February 23, 1968 until his adulthood "just like if he was [her] natural and biological son." These statements are inconsistent as the 2010 affidavits assert that the applicant was adopted by his

[2] In our May 7, 2009 decision, we indicated that the second clause of former section 321(a)(3) of the Act only applied to the derivation of citizenship through a biological mother and consequently, we did not reach the issue of the applicant's legitimation. Inasmuch as former subsection 321(b) of the Act applied to all provisions of former subsection 321(a) of the Act, the record indicates that the applicant was not legitimated by his father under the laws of New York State or the Dominican Republic. *See Matter of Levy,* 17 I&N Dec. 539, 540 (BIA 1980) (marriage of natural parents is required for legitimation in New York). Although the Dominican Republic eliminated legal distinctions between children born in and out of wedlock, the change only applied prospectively and to children under 18 at the time the law went into effect in 1995. *Matter of Martinez*, 21 I&N Dec. 1035 (BIA 1997). The applicant in this case turned 18 in 1980 and was not legitimated under the former law of the Dominican Republic which required the marriage of the child's natural parents. *See Id.* at 1039; *Matter of Doble-Pena*, 13 I&N Dec. 366 (BIA 1969).

stepmother upon his arrival in the United States in 1967, but the applicant's stepmother's 2008 affidavit indicated that he did not come into her custody until 1968, after her marriage to his father. In addition to this inconsistency, the affidavits only show that there was an informal agreement between the parties that the applicant would live with his father and stepmother in the United States. The record lacks any evidence that the applicant's stepmother legally adopted him, as required by former sections 101(c) and 321(b) of the Act. The 2010 certification of the applicant's stepmother resubmitted with the present motion was notarized in the Dominican Republic, but was not issued by the Civil Registry Office in that country and lacks any other indication that the applicant was formally adopted by his stepmother.[3] Even if such an adoption occurred in the Dominican Republic, it would not suffice because section 101(c)(1) of the Act requires that the child be adopted in the United States. Consequently, the applicant did not derive citizenship through his stepmother under former section 321 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). The applicant has not met this burden. Accordingly, the appeal will remain dismissed and the application will remain denied.

ORDER: The AAO's prior decision, dated July 28, 2011, is affirmed. The appeal remains dismissed and the application remains denied.

[3] According to the U.S. Department of State, certified copies of adoption certificates are available from the Civil Registry Office with jurisdiction of the area in which the adoption took place. *See Dominican Republic Visa Reciprocity Schedule*, available at: http://travel.state.gov/visa/fees/fees_5455.html?cid=8979 (last accessed Feb. 6, 2012).