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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



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Date: SEP 21 2012

Office: HARTFORD, CT

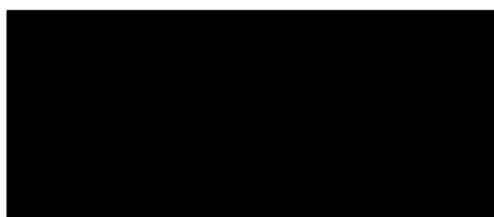
FILE: 

IN RE:

Applicant: 

APPLICATION: Application for Certificate of Citizenship under Former Section 321 of the Immigration and Nationality Act, 8 U.S.C. § 1432 (1998).

ON BEHALF OF APPLICANT:

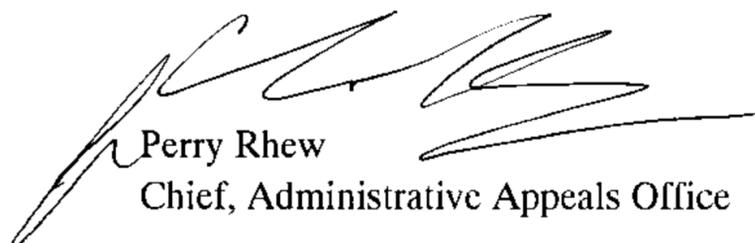


INSTRUCTIONS:

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 Hartford, Connecticut Field Office Director (the director) denied the Application for Certificate of Citizenship (Form N-600) and the matter is now before the Administrative Appeals Office (AAO) on appeal.¹ The appeal will be dismissed.

Pertinent Facts and Procedural History

The applicant was born in wedlock on April 24, 1981 in Pakistan. The applicant's mother became a U.S. citizen through naturalization on May 8, 1996. The applicant became a lawful permanent resident on June 2, 1998. The applicant's father is not a U.S. citizen. The applicant seeks a certificate of citizenship, claiming that he derived U.S. citizenship through his mother under the first clause of former section 321(a)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1421 (1998). In a detailed decision, the director denied the Form N-600 because the applicant failed to submit credible evidence of his parents' divorce and his mother's subsequent custody over him to satisfy the first clause of former section 321(a)(3) of the Act. On appeal, counsel contends that the relationship between the applicant and his mother is undisputed and that the evidence in the record demonstrates a valid divorce between the applicant's parents under Pakistani law. Counsel also submits the result of DNA testing to establish that the applicant is the biological child of his U.S. citizen mother.

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, in effect at the time the applicant entered the United States as a lawful permanent resident in 1998, is applicable in this case. Former section 321(a) of the Act provided that:

A child born outside of the United States of alien parents, or of an alien parent and a citizen parent who has subsequently lost citizenship of the United States, 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 under the age of 18 years; and

¹ The applicant previously filed a Form N-600 in February 2003, which was ultimately denied. The AAO dismissed the applicant's subsequent appeal in 2004.

(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 18 years.

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

Analysis

In a thorough decision, the director discussed and addressed the evidence in the record, including the applicant's submission of a fraudulent divorce decree for his parents and a fraudulent custody arrangement document ("Suit for Appointment of Guardian"), both dated 1994, when filing his first N-600 in 2003. The director also discussed the applicant's mother's use of two different aliases and dates of birth in records maintained by U.S. Citizenship and Immigration Services (USCIS), as well as testimony she provided to a USCIS officer in 2011 in support of the instant Form N-600. More importantly, the director discussed the lack of probative value of the 1994 divorce decree and the 2009 *Suit for Jactitation of Marriage* (Jactitation) given the inconsistent information in the two documents, as well as the applicant's failure to address the finding that the 1994 divorce decree and custody document were fraudulent.

On appeal, counsel contends that the director misread the 1994 divorce decree and found it to be fraudulent because the applicant's mother was not present at the proceedings. Counsel asserts that the divorce is valid under Pakistani law, which only requires the presence of one of the parties to the divorce. Counsel asserts that because the 1994 divorce document states that the applicant's father was present in the court, the document is valid. The fraud investigation revealed, however, that the documentation submitted to obtain the divorce showed that neither of the parties was present in Pakistan when the divorce document was issued. Counsel also claims that the 2009 Jactitation further confirms the validity of the 1994 divorce decree, but counsel fails to rebut the fraud underlying the 1994 decree.

Generally, a divorce that is valid where rendered will be recognized for immigration purposes unless such recognition contravenes public policy. *Matter of Luna*, 18 I&N Dec. 385, 386 (BIA 1983). To establish the validity of his parents' divorce, the applicant submitted a letter, dated August 17, 2010, from the [REDACTED], New York. The attaché certified that: "[The] Divorce Paper, Affidavit and Legal Custody papers – are legal and are acceptable by the government of Pakistan. They are also acceptable in Pakistani courts for legal purposes." When an applicant relies on a foreign law to establish eligibility for a benefit, the application of the foreign law is a question of fact, which must be proved by the applicant. *Matter of Kodwo*, 24 I&N Dec. 479, 482 (BIA 2008) (citing *Matter of Annang*, 14 I&N Dec. 502 (BIA 1973)). The attaché attached a copy of the 1994 divorce decree and the 2009 Jactitation to his letter; however, no affidavit or "legal custody paper" was attached and there is no information regarding these purported documents. In addition, while the attaché stated that the listed documents were "legal," it appears that his only role in reviewing these documents was to notarize signatures, as he

provided a disclaimer that “for the contents of this document the consulate general does not assume responsibility.” The letter from the attaché is without probative value concerning the validity of the applicant’s parents’ alleged divorce in Pakistan in 1994, particularly in light of the findings that the document was fraudulent, and the applicant presents no other evidence to establish the validity of the 1994 divorce decree or the 2009 Jactitation under Pakistani law.²

Even if the applicant had presented sufficient evidence of the validity of his parents’ divorce in Pakistan, the record still fails to establish that the applicant was in his mother’s legal custody. The 1984 custody order in the record has been found to be fraudulent, and the applicant presents no evidence to dispute the finding of fraud. The record contains no evidence, such as school records, tax returns or other documentation, that his mother had legal custody of the applicant prior to the applicant’s eighteenth birthday.

Given the prior submission of a fraudulent divorce decree and custody order, dated 1994, the applicant’s failure to address the inconsistencies that the director raised in the denial letter on appeal, and the lack of evidence attesting to the validity of the applicant’s parents’ alleged divorce in Pakistan and the applicant’s mother’s legal custody of the applicant, the present record does not establish the applicant’s eligibility for citizenship under the first clause of former section 321(a)(3) of the Act. The applicant does not allege, nor does the evidence establish, that the applicant derived U.S. citizenship under any other part of former section 321 of the Act.

Conclusion

The applicant bears the burden of proof to establish his eligibility for derivative citizenship. Section 341 of the Act, 8 U.S.C. § 1452; 8 C.F.R. § 341.2(c). On appeal, the applicant has failed to meet his burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.

² As the director noted, the 2009 Jactitation contains information that is inconsistent with evidence in the record. First, the Jactitation lists the parents’ date of marriage as 1962, not 1975, the date of marriage the applicant’s mother listed on the Form I-130, petition for alien relative, which she filed on the applicant’s behalf. Second, the Jactitation indicates that the applicant’s father stated that he would notify USCIS that he never granted a divorce to the applicant’s mother; however, the 1994 divorce decree indicates that the applicant’s father was the plaintiff in the divorce proceedings. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).