



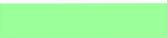
U.S. Citizenship
and Immigration
Services

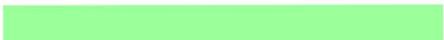
(b)(6)



DATE: APR 15 2013

OFFICE: NEW YORK, NY

FILE: 

IN RE: 

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:

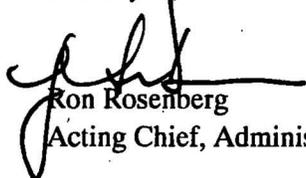


INSTRUCTIONS:

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,



Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Form N-600, Application for Certificate of Citizenship (Form N-600) was denied by the District Director, New York, New York (the director) and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant was born in Panama on [REDACTED] to unwed parents. The applicant's mother was born in Panama and she became a naturalized U.S. citizen on February 26, 1974, when the applicant was 14 years old. The applicant's father was born in Panama and is not a U.S. citizen. The applicant was admitted into the United States as a lawful permanent resident on August 4, 1967, when he was 8 years old. He seeks a certificate of citizenship pursuant to former section 321 of the Immigration and Nationality Act (the former Act), 8 U.S.C. § 1432, based on the claim that he derived U.S. citizenship through his mother.

In a decision dated August 14, 2012, the director determined that the applicant had been legitimated by his father and, therefore, could not derive U.S. citizenship solely through the naturalization of his mother. The applicant therefore failed to meet the requirements for U.S. citizenship as set forth in section 321 of the former Act. The application was denied accordingly.

Through counsel, the applicant asserts on appeal that the relevant laws in Panama contained distinctions with regard to the rights of legitimate and illegitimate children, and he was therefore not legitimated under Panamanian law. Counsel also asserts that the director incorrectly relied on precedent Board of Immigration Appeals (Board) cases by stating all children are legitimate under the laws of Panama. Counsel additionally asserts that the definition of "child" contained in section 101(c) of the Act, 8 U.S.C. § 1101(c), requires a child to be in the legal custody of the legitimating parent. Counsel indicates that the law in effect at the time of the applicant's mother's naturalization presumed that an unwed mother had legal custody of her child. To support her assertions, counsel submits birth and naturalization certificate evidence for the applicant, and a legal opinion about Panamanian legitimation law from an attorney in Panama.

The entire record was reviewed and considered in rendering a decision on the appeal.

"The applicable law for transmitting citizenship to a child born abroad when one parent is a U.S. citizen is the statute that was in effect at the time of the child's birth." *Chau v. INS*, 247 F.3d 1026, 1029 (9th Cir. 2000) (citations omitted). The applicant was born to unwed parents on July 5, 1959, and his mother became a naturalized U.S. citizen on February 26, 1974. Section 321 of the former Act therefore applies to the applicant's case, and provided in pertinent part that:

(a) 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 said child is under the age of 18 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 (2) or (3) of this subsection, or thereafter begins to reside permanently in the United States while under the age of 18 years.

The record fails to establish that the applicant's father is deceased or that he is a naturalized U.S. citizen. The applicant therefore failed to meet the requirements of section 321(a)(1) or (2) of the former Act. In addition, the evidence reflects that the applicant's parents never married. The applicant thus failed to establish that his parents were legally separated as set forth in the first phrase of section 321(a)(3) of the former Act. The record also reflects that the applicant's paternity was established by legitimation at the time of his birth and he therefore cannot derive U.S. citizenship from his mother under the second prong of section 321(a)(3) of the former Act.

The enactment of the Panamanian Constitution of 1946, effective September 30, 1946, abolished the distinction between children born in and out of wedlock. Children born out of wedlock after this date are considered legitimate if recognized by their natural fathers. *See Matter of Sinclair*, 13 I&N Dec. 613 (BIA 1970); *see also Matter of Maloney*, 16 I&N Dec. 650 (BIA 1978).

On appeal, counsel suggests that the AAO disregard the holdings in *Matter of Sinclair* and *Matter of Maloney* based on assertions that differences exist with regard to the rights of legitimate and illegitimate children in Panama, and that Board decisions to the contrary were therefore incorrect. In support of her assertions, counsel submits a legal opinion from an attorney in Panama, who states, in part, that under the Panamanian Civil Code in effect at the time of the applicant's birth, the father could not have legally acknowledged the applicant as his biological child.

Counsel additionally asserts that the definition of "child" contained in section 101(c) of the Act requires a person to be in the legitimating parent's legal custody at the time of legitimation. According to counsel, the Board decision, *Matter of De la Rosa*, 14 I&N Dec. 728 (BIA 1974), presumed that an unwed mother had legal custody of her child and, thus, the applicant was not in his father's legal custody at the time of legitimation.

The regulation at 8 C.F.R. §§ 103.3(c) reflects that published Board decisions are binding on all U.S. Citizenship and Immigration Services (USCIS) officers in their administration of the Act unless or until the decisions are modified or overruled by later precedent decisions. Counsel has provided no evidence that *Matter of Sinclair*, 13 I&N Dec. 613 and *Matter of Maloney*, 16 I&N Dec. 650 have been modified or overruled. The AAO is therefore bound to follow these decisions.

We acknowledge counsel's arguments regarding *Matter of De La Rosa* but find them unpersuasive in light of the Board's publication of *Matter of Rivers*, 17 I&N Dec. 419 (BIA 1980), in which it modified its holding that only the mother had a natural right to the custody of a legitimated child. According to the Board in *Matter of Rivers*, the natural father of a child will be presumed to have had legal custody of that child at the time of legitimation, in the absence of affirmative evidence indicating otherwise. Counsel has provided no evidence that *Matter of Rivers* has been modified or overruled.

Counsel relies on a legal opinion from a Panamanian attorney submitted on appeal to demonstrate that the applicant was not legitimated under Panamanian law. When an applicant relies on foreign law to establish eligibility for an immigration 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 attorney's legal opinion is based, in part, on information provided to him by another attorney in Panama, and is not supported by any evidence that the Civil Code, which the attorney relies upon to demonstrate that the applicant was not legitimated, had any legal effect on the status of children born out of wedlock in light of the 1976 constitutional provisions that eliminated any distinctions between children born in or out of wedlock.

The record includes a birth certificate for the applicant, issued by the Panamanian Civil Registry, listing the names of both his mother and his father, and reflecting that the applicant's father declared his paternity over the applicant before the Civil Registry in Colon, Panama. Accordingly, the AAO finds the applicant to have been recognized by his natural father and to have been legitimated at the time of his birth. Because the applicant was legitimated at the time of his birth he cannot demonstrate that he is eligible to derive U.S. citizenship solely through his mother under the second prong of section 321(a) of the former Act.

The regulation at 8 C.F.R. § 341.2(c) states that the burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. The applicant has failed to meet his burden in the present matter. The appeal will therefore be dismissed.¹

ORDER: The appeal is dismissed.

¹ We take note that the U.S. District Court for the Eastern District of New York also found that the applicant had not derived U.S. citizenship through the naturalization of his mother as discussed in *United States v. Simpson*, 10-CR-836 RRM JO, 2013 WL 880274 (E.D.N.Y. Mar. 8, 2013).