



U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **APR 10 2014** Office: COLUMBUS, OH

IN RE: Applicant:

APPLICATION: Application for Certificate of Citizenship under Section 320 of the Immigration and Nationality Act; 8 U.S.C. § 1431

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

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

Pertinent Facts and Procedural History

The record reflects that the applicant was born in Yemen on September 24, 2003, and that she was admitted into the United States as a lawful permanent resident on October 23, 2012, when she was nine years old. The applicant presently seeks a certificate of citizenship pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431, based on the claim that she derived citizenship through her U.S. citizen father.

The director determined, in a decision dated July 8, 2013, that the applicant failed to respond to a Request for Evidence (RFE) asking for: her original birth certificate, with certified translation; an explanation regarding discrepancies between her father's name as stated on the birth certificate copy that was submitted with her application, and her father's name as stated on the birth certificate translation; secondary evidence establishing the claimed father-child relationship; and evidence that she was legitimated by her father.¹ The director determined that the applicant failed to meet her burden of establishing U.S. citizenship under section 320 of the Act, and the Form N-600 was denied accordingly.

On appeal the applicant asserts that her father legally changed his name when he became a naturalized U.S. citizen; and that the discrepancies between her father's name as listed on her birth certificate, and his name as listed on the translation for the birth certificate, occurred because the wrong documents were sent in.

Applicable Law

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3rd Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

The applicable law for derivative citizenship purposes is "the law 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). Section 320 of the Act, as amended by the Child Citizenship Act of 2000 (the CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), took effect on February 27, 2001, and provides for automatic derivation of U.S. citizenship upon the fulfillment of certain conditions prior to a child's 18th birthday. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153

¹ The director also noted that the applicant's Form N-600 was out of date, and requested submission of a new, valid Form N-600.

(BIA 2001). The provisions contained in section 320 of the Act apply to the applicant's U.S. citizenship claim.

Section 320(a) of the Act provides that:

A child born outside of the United States automatically becomes a citizen of the United States when all of the following conditions have been fulfilled:

- (1) At least one parent of the child is a citizen of the United States, whether by birth or naturalization.
- (2) The child is under the age of eighteen years.
- (3) The child is residing in the United States in the legal and physical custody of the citizen parent pursuant to a lawful admission for permanent residence.

Section 101(c)(1) of the Act, 8 U.S.C. § 1101(c)(1) provides, in pertinent part, that for citizenship purposes, the term "child" means:

an unmarried person under twenty-one years of age and includes a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in the United States or elsewhere . . . if such legitimation . . . takes place before the child reaches the age of 16 years . . . and the child is in the legal custody of the legitimating . . . parent or parents at the time of such legitimation

The burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. 8 C.F.R. § 341.2(c). The "preponderance of the evidence" standard requires that the record demonstrate that the applicant's claim is "probably true," based on the specific facts of each case. See *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (citing *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r. 1989)). "Citizenship is a high privilege, and when doubts exist concerning a grant of it . . . they should be resolved in favor of the United States and against the claimant." *U.S. v. Manzi*, 48 S. Ct. 328, 467 (1928).

Analysis

The issue in the present case is whether the applicant is the child of her father under section 101(c)(1) of the Act. The record contains a birth certificate with a translation reflecting that the applicant was born on September 24, 2003, to [REDACTED] (mother). The birth certificate was registered on February 10, 2008, more than four years after the applicant's birth. A "Legal Marriage Contract" translation contained in the record states that [REDACTED] were married in

Yemen on December 16, 2002, and that the marriage was registered on February 12, 2008. The record does not contain the original-language marriage contract.

The same evidentiary weight does not attach to a delayed birth certificate as would attach to one contemporaneous with the actual event. *See Matter of Lugo-Guadiana*, 12 I&N Dec. 726, 729 (BIA 1968). A delayed certificate must be evaluated in light of other evidence in the record and in light of the circumstances of the case. *See Matter of Bueno-Almonte*, 21 I&N Dec. 1029, 1033 (BIA 1997). The evidentiary value given to a delayed birth certificate is rebutted by contradictory evidence, and each case must be decided on its own facts with regard to the sufficiency of the evidence presented as to the petitioner's birth. *See Matter of Serna*, 16 I&N Dec. 643 (BIA 1978).

Here, the record contains no explanation with regard to the delay in registering the applicant's birth, and the applicant submits no evidence issued contemporaneously with her birth to establish that she is the biological child of [REDACTED]. Non-contemporaneous evidence contained in the record also fails to corroborate or establish the applicant's birth to [REDACTED] in 2003. Copies of the applicant's passport; evidence indicating that the applicant has resided in the United States with [REDACTED], and that he sent money to the applicant's family in Yemen; and photos of the applicant with [REDACTED], are all dated after 2008 and fail to establish a parent-child relationship between the applicant and [REDACTED].

Other evidence in the record also contains material discrepancies with regard to [REDACTED] parental relationship to the applicant. Naturalization application evidence reflects that prior to [REDACTED]'s naturalization as a U.S. citizen on June 12, 2007, "[REDACTED]" legal name was [REDACTED]. The fact that the applicant's father legally changed his name when he naturalized in 2007, does not address or explain why the translation for the applicant's birth certificate states that she was born on September 24, 2003 to [REDACTED] rather than to [REDACTED]. It also fails to explain why the marriage certificate translation contained in the record indicates that her father was married in December 2002 under the name, [REDACTED]. Furthermore, the director's denial decision reflects that the record contains discrepancies between the father's name listed on the initial birth certificate submitted by the applicant, and the father's name contained on the English translation for the birth certificate. The applicant's statement on appeal that she sent in the wrong documents fails to adequately explain the alleged discrepancies with regard to her father's name. Moreover, [REDACTED]'s claim on a Form N-600 signed by him on July 2, 2013, that his spouse, [REDACTED] is the applicant's mother conflicts materially with birth certificate evidence reflecting that the applicant's mother is [REDACTED]. *See Form N-600, dated July 2, 2013, Part 3C and D.*

² The director's RFE gave the applicant the option of submitting DNA evidence to establish her claimed father-child relationship; however, no DNA evidence was submitted.

The record contains additional material inconsistencies with regard to [REDACTED] marital history. The marriage contract translation contained in the record states that [REDACTED] [REDACTED] were married in Yemen on December 16, 2002; however, [REDACTED] states on a Form N-600 signed by him on July 2, 2013, that he and the applicant's mother were not married at the time of the applicant's birth, and that they did not marry after the applicant was born. See *Form N-600, dated July 2, 2013, questions 21 and 22*. He states on a Form N-600 that he signed on March 4, 2013, that he was married only one time. See *Form N-600, dated March 4, 2013, question 9A*. On the Form N-600 that he signed on July 2, 2013, however, he states that he has been married three times, and that his current wife is [REDACTED]. See *Form N-600, dated July 2, 2013, Part 1, question #8a and Part 3C and D*.³

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. Here, the evidence submitted to establish that the applicant is the child of U.S. citizen, [REDACTED] has diminished evidentiary value due to delayed issuance, lack of corroborative evidence, and material discrepancies with other evidence in the record. The applicant therefore failed to meet her burden of establishing that she derived citizenship through a U.S. citizen parent pursuant to section 320 of the Act.

Conclusion

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has been met.

ORDER: The appeal is dismissed.

³ No divorce evidence or original marriage certificate evidence is contained in the record.