U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

Date: APR 2 9 2014 Office: SAN FRANCISCO, CA FILE: [redacted]

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship under Section 322 of the Immigration and Nationality Act; 8 U.S.C. § 1433.

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.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director of the San Francisco, California Field Office (the director) approved the Application for Citizenship and Issuance of Certificate Under Section 322 (Form N-600K) and certified her decision to the Administrative Appeals Office (AAO) for review. The director's decision will be affirmed. The matter will be returned to the director for further processing of the Form N-600K.

Pertinent Facts and Procedural History

The applicant was born in Spain on January 1, 2013. Her parents, as indicated on her birth certificate, are and The applicant's parents are not legally married. The applicant's father was born in Italy on April 1, 1973, but acquired U.S. citizenship at birth through his mother. The applicant's paternal grandmother, was born in France but derived U.S. citizenship through her U.S. citizen parent. The applicant's father seeks a certificate of citizenship on the applicant's behalf claiming that she acquired U.S. citizenship pursuant to section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433, as amended.

Applicable Law

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 "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)).

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 322 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), applies to this case. *See Matter of Rodriguez-Tejedor,* 23 I&N Dec. 153 (BIA 2001).

Section 322 of the Act provides, in pertinent part that:

> (a) A parent who is a citizen of the United States . . . may apply for naturalization on behalf of a child born outside of the United States who has not acquired citizenship automatically under section [320 of the Act]. The [Secretary of Homeland Security (the Secretary)] shall issue a certificate of citizenship to such applicant upon proof, to the satisfaction of the [Secretary], that the following conditions have been fulfilled:

(1) At least one parent . . . is a citizen of the United States, whether by birth or naturalization.

(2) The United States citizen parent--

(A) has . . . been physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years; or

(B) has . . . a citizen parent who has been physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years.

(3) The child is under the age of eighteen years.

(4) The child is residing outside of the United States in the legal and physical custody of the applicant [citizen parent] (or, if the citizen parent is deceased, an individual who does not object to the application).

(5) The child is temporarily present in the United States pursuant to a lawful admission, and is maintaining such lawful status.

(b) Upon approval of the application (which may be filed from abroad) and, except as provided in the last sentence of section [337(a) of the Act], upon taking and subscribing before an officer of the Service within the United States to the oath of allegiance required by this [Act] of an applicant for naturalization, the child shall become a citizen of the United States and shall be furnished by the [Secretary] with a certificate of citizenship.

* * *

Section 101(c) of the Act, 8 U.S.C. § 1101(c) states, in pertinent part, that for naturalization and citizenship purposes under subchapter III of the Act:

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 . . . .

Analysis

The sole issue in this case is whether the applicant was legitimated under the laws of Spain.

As noted by the director, the Board of Immigration Appeals (Board) held in *Matter of C*, 9 I&N Dec. 597 (1962), citing Article 140 of the Civil Code of Spain of 1889, that "[l]egitimation in Spain does not take place until the parents of the illegitimate child have been legally married."

The Library of Congress (LOC) explains, however, that legitimation in Spain is governed by Article 120 of the Spanish Civil Code, as amended. *See* LOC 2013-009452. According to the LOC, the Spanish Constitution, which was enacted in 1978, establishes that all children are equal regardless of the marital circumstances of their parents. *Id.* Under current Spanish law, an out of wedlock child's filiation and paternity is established at registration in the Civil Registry. *Id.*

As noted by the director, the Board's decision in *Matter of C* is inapplicable in this case given the intervening substantial changes in Spanish law. The applicant was born in 2013. Her birth certificate indicates that she was recognized by both her father and mother before the Civil Registrar prior to her birth. Accordingly, the applicant has established that she was legitimated under Spanish law such that she meets the definition of a child under section 101(c)(1) of the Act.

The applicant's paternal grandmother had the required years of physical presence under section 322(a)(2)(B) of the Act, and the applicant meets all other required elements under sections 322 of the Act to derive U.S. citizenship from her U.S. citizen father. [1]

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 director's decision is affirmed. The matter is returned to the San Francisco Field Office for further processing of the Form N-600 under the regulations at 8 C.F.R. § 322.

[1] The director noted that the applicant will be scheduled to appear for an interview subsequent to the issuance of this decision, and thus be admitted into the United States so that she may comply with the regulation 8 C.F.R.§ 322.3(b)(1)(viii).