



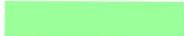
U.S. Citizenship
and Immigration
Services

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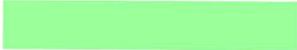


Date: AUG 04 2014

Office: HOUSTON, TX

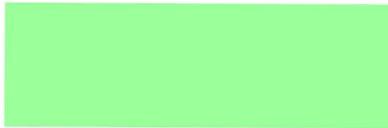
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IN RE:

Applicant: 

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for Certificate of Citizenship under Former Section 321 of the Immigration and Nationality Act; 8 U.S.C. § 321 (repealed).

ON BEHALF OF APPLICANT:

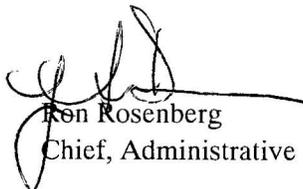


INSTRUCTIONS:

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 Houston, Texas Field Office Director (the director) denied the Application for Certificate of Citizenship (Form N-600) and the matter came before the Administrative Appeals Office (AAO) on appeal. We dismissed the appeal on December 28, 2010. The applicant filed a Notice of Appeal or Motion (Form I-290B), seeking reopening and reconsideration of our decision. The director dismissed the applicant's motion on July 11, 2011 because it was untimely filed. On March 6, 2014 the director reopened the matter on his own motion and forwarded the applicant's July 2011 motion to us for review and decision. We will grant the applicant's motion but affirm our dismissal of the applicant's appeal. The Form N-600 will remain denied.

Pertinent Facts and Procedural History

The applicant seeks a certificate of citizenship pursuant to former section 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431, claiming that he derived U.S. citizenship through his mother, [REDACTED], a naturalized U.S. citizen.

The director initially denied the Form N-600 because the applicant failed to establish his identity as the son of [REDACTED]. According to the director, the applicant had submitted two birth certificates each with different data, and failed to submit evidence of a legal name change, as the name on the two birth certificates did not match the name that the applicant provided on the Form N-600. When deciding the appeal, we did not address the evidence relating to the applicant's identity but instead determined that the applicant was not in [REDACTED] custody such that she could transmit U.S. citizenship to him.

Upon receipt of the director's reopening of the matter on March 6, 2014, we issued a Request for Evidence (RFE) to afford the applicant an opportunity to address the remaining deficiencies of record. Specifically, we withdrew our prior determination regarding custody but found that the Form N-600 could not be approved because the applicant had not sufficiently established his identity.¹

The RFE afforded the applicant eight weeks to submit requested evidence to our office, or by July 9, 2014. As of this date, however, we have received no evidence or correspondence from the applicant or counsel and consider the record complete.

Applicable Law

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

The applicable law for derivative citizenship purposes is that in effect at the time the critical events giving rise to eligibility occurred. See *Minasyan v. Gonzales*, 401 F.3d 1069, 1075 (9th

¹ As the RFE is part of the applicant's administrative record, we shall repeat only certain parts of its content as necessary here.

Cir. 2005). Former section 321 of the Act, which applies to the applicant's citizenship claim, provided, in pertinent part, that:

(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.

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). *See also*, 8 C.F.R. § 341.2(c) (the burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence.) The "preponderance of the evidence" standard requires that the record demonstrate that an applicant's claim is "probably true," based on the specific facts of each case. *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)).

Analysis

The applicant claims derivative citizenship through his mother, [REDACTED] under former section 321(a)(3) of the Act. He claims that he is [REDACTED], with a May 7, 1981 date of birth, who is listed on the 1990 divorce decree between [REDACTED] and [REDACTED].

As discussed in the RFE, the applicant has admittedly used the name [REDACTED] in various benefit requests submitted to U.S. Citizenship and Immigration Services (USCIS) and the legacy Immigration and Naturalization Service (INS), as well as on state-issued documents, such as a New York State driver's license and official school records from Texas and New York.

However, the applicant claims that his true name is [REDACTED], as stated on the divorce decree he submitted to establish derivative citizenship through his mother under former section 321(a)(3) of the Act.

The applicant submitted the results of DNA testing, which shows that he and [REDACTED] share a biological parent-child relationship with a statistical probability of 99.5 percent. While the DNA test establishes the biological relationship between the applicant and [REDACTED] it does not establish that the applicant is the child, [REDACTED] listed on the divorce decree between [REDACTED] because his identity has not been sufficiently established.

The record contains three birth certificates purporting to be a “certified true copy” of the applicant’s birth as recorded in the official records of the Republic of Sierra Leone, each of which was submitted in support of a request for immigration benefits. Each certificate differs in the information contained therein:

1)

2)

3)

The 1990 birth certificate lists a date of birth of May 8, 1981, not May 7, 1981 as claimed on the 2004 and 2009 birth certificates. In addition, each birth certificate contains different information about the time of day and place of birth. Most importantly, however, each birth certificate

² The copy is unclear; the date could also be read as August 26, 2009.

indicates that the birth is recorded in a different volume and page number of the Republic of Sierra Leone's official records; yet, each certificate purports to be a "certified true copy" of the official birth record. While an individual may request and receive more than one certified copy of a birth record over the years, the data elements describing the details of the individual's birth should remain the same among the different birth certificates, even if the date of issuance is different. Here, no details of the birth are consistently recorded among the three certificates.

Regarding his name, the applicant submitted a statement and statements from family members stating that his name is [REDACTED] but that he goes by the name [REDACTED]. The applicant submitted a notarized statement signed by the applicant and [REDACTED] in 1996, which states that the applicant consents to a change in name to [REDACTED]. This statement, however, is not supported by a court order or other evidence of an official name change. The record contains a copy of the applicant's New York State driver's license stating his name as [REDACTED] and various school records also show his name as [REDACTED]. The applicant has not, however, submitted the evidence he provided to the New York State Department of Motor Vehicles and school authorities in Texas and New York to demonstrate that his legal name is [REDACTED] as all three of the birth certificates state his name as [REDACTED].

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).

As stated earlier in this decision, the applicant has failed to provide any evidence to resolve the inconsistencies in the record pertaining to his identity, despite the opportunity to do so through our issuance of an RFE. Although DNA evidence establishes a biological link between the applicant and [REDACTED] a preponderance of the relevant evidence does not establish that he is the same [REDACTED], with a May 7, 1981 date of birth, who is listed on the 1990 divorce decree between [REDACTED] and [REDACTED]. The applicant has, therefore, not met his burden of satisfying former section 321(a) of the Act, such that he may derive U.S. citizenship from [REDACTED].

Conclusion

The burden of proof shall be on the applicant to establish his claim to U.S. citizenship by a preponderance of the evidence. 8 C.F.R. § 341.2(c). Here, the applicant has not met his burden.

ORDER: The applicant's motion is granted. The AAO's prior decision dismissing the appeal, dated December 28, 2010, is affirmed. The Form N-600 remains denied.