



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: **AUG 20 2014**

Office: NEW YORK, NY

FILE: [REDACTED]

IN RE:

Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under Former Sections 301, 309 and 321 of the Immigration and Nationality Act; 8 U.S.C. §§ 1401, 1409 and 1432

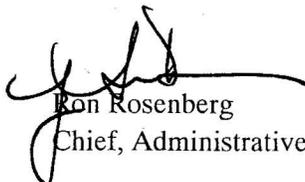
ON BEHALF OF APPLICANT:

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 Director of the New York, New York District Office (the director) denied the Application for Certificate of Citizenship (Form N-600), a decision that the director affirmed in response to the applicant's motions to reopen or reconsider. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

Pertinent Facts and Procedural History

The applicant was born in Guyana to unmarried parents on January 10, 1965. He was admitted into the United States as a lawful permanent resident on March 20, 1976, when he was 11 years old. The applicant's mother was born in Guyana, and she became a naturalized U.S. citizen on April 26, 1983, when the applicant was 18 years old. The applicant asserts that his father, now deceased, was born in the United States.¹ The applicant seeks a certificate of citizenship pursuant to former sections 301(a)(7) and 309(a) of the former Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1401(a) and 1409(a), based on the claim that he acquired U.S. citizenship at birth through his father. Alternatively, he seeks a certificate of citizenship pursuant to former section 321 of the Act, 8 U.S.C. § 1432, based on the claim that he derived U.S. citizenship through his mother when she naturalized.

The director determined that the applicant failed to establish that he derived U.S. citizenship through a parent under former section 321 of the Act or former sections 309 or 301 of the Act. Specifically, the director determined that the applicant failed to establish that he derived U.S. citizenship through his mother under former section 321 of the Act, because he was 18 when she became a naturalized U.S. citizen. The director determined further that the applicant failed to establish that he was legitimated by his father prior to his 21st birthday, and that he therefore did not meet former sections 309 or 301 of the Act acquisition of citizenship requirements.

On appeal, the applicant asserts that the Status of Children Act was enacted in Guyana in 2009, which granted all children equal rights in Guyana, and the law applies retroactively to children born before its enactment. His father therefore legitimated him at birth in Guyana, as required under former section 309 of the Act. The applicant asserts that evidence in the record also

¹ The record does not contain a birth certificate for the applicant's father or evidence issued contemporaneously with the applicant's father's birth. The applicant failed to establish that his father's birth certificate does not exist, or that it cannot be obtained. 8 C.F.R. §§ 103.2(b)(2)(i), (ii). Additionally, evidence in the record from the Social Security Administration, U.S. military, as well as the applicant's father's death certificate, and affidavits from family members contain conflicting birth dates for his father (birth dates vary between December 18, 1915, December 18, 1917, December 18, 1922, and December 22, 1922). However, because the director appears to have accepted that the applicant's father is a U.S. citizen, and the issue was not addressed in the director's decision, we will analyze the applicant's acquisition of citizenship at birth claim through his father, noting there is insufficient evidence of the father's U.S. citizenship.

establishes that his father meets U.S. physical presence requirements contained in former section 301(a)(7) of the Act. He therefore established that he acquired U.S. citizenship through his father at birth. Alternatively, the applicant indicates that he derived U.S. citizenship through his mother under former section 321 of the Act, because, although his mother did not take the oath to become a naturalized U.S. citizen until after the applicant's 18th birthday, this fact should be disregarded for equity reasons, because her naturalization application was filed when he was 17, and the Service unreasonably delayed processing of her application.²

Applicable Law

Former sections 301 and 309 of the Act

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. *See Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1028 n.3 (9th Cir. 2001) (internal citation omitted). The applicant was born in 1965. Former section 301(a)(7) of the Act therefore applies to his acquisition of citizenship claim.

Former section 301(a)(7) of the Act stated, in pertinent part that the following shall be nationals and citizens of the United States at birth:

A person born outside the geographical limits of the United States . . . of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States . . . for a period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years: *Provided*, That any periods of honorable service in the Armed Forces of the United States by such citizen parent may be included in computing the physical presence requirements of this paragraph.³

² The record also includes an immigration judge decision terminating the applicant's removal proceedings on the basis that the applicant acquired U.S. citizenship through his father. *See Decision of the Immigration Judge*, dated May 13, 2013. The immigration judge's citizenship finding is not binding on these proceedings. An immigration judge may credit an individual's citizenship claim in the course of terminating removal proceedings for lack of jurisdiction because the government has not established the individual's alienage by clear and convincing evidence. *See* 8 C.F.R. § 1240.8(a), (c) (prescribing that the government bears the burden of proof to establish alienage and removability or deportability by clear and convincing evidence). U.S. Citizenship and Immigration Services (USCIS), however, retains sole jurisdiction to issue a certificate of citizenship. *See* section 341(a) of the Act, 8 U.S.C. § 1452(a); and 8 C.F.R. § 341.

³ Section 301(a)(7) of the former Act was re-designated as section 301(g) by the Act of October 10, 1978, Pub. L. No. 95-432, 92 Stat. 1046 (1978). The requirements of section 301(a)(7) of the former Act remained the same after the re-designation and until 1986.

An applicant born out of wedlock must additionally satisfy the provisions set forth in section 309(a) of the Act. Prior to November 14, 1986, section 309(a) of the former Act provided in pertinent part that:

The provisions of paragraphs (3)(4)(5), and (7) of section 301(a) . . . shall apply as of the date of birth to a child out-of-wedlock on or after the effective date of this Act, if the paternity of such child is established while such child is under the age of twenty-one years by legitimation.⁴

Legitimation can take place under the law of the child's or the father's residence or domicile. *See* section 101(c) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(c).

Former Section 321 of the Act

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 Cir. 2005); *accord Jordon v. Attorney General*, 424 F.3d 320, 328 (3rd Cir. 2005). Former section 321 of the Act, in effect at the time of the applicant's mother's naturalization in 1983, is applicable in this case.

Former section 321 of the Act 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 Subsequent amendments made to the Act in 1986 provided that a new section 309(a) applied to persons who had not attained eighteen years of age as of the November 14, 1986, date of the enactment of the Immigration and Nationality Act Amendments of 1986, Pub. L. No. 99-653, 100 Stat. 3655 (INAA). Amendments provided further that the former section 309(a) applied to any individual who had attained 18 years of age as of November 14, 1986, and that former section 309(a) applied to any individual with respect to whom paternity had been established by legitimation prior to November 14, 1986. *See section 13 of the INAA, supra. See also section 8(r) of the Immigration Technical Corrections Act of 1988*, Pub. L. No. 100-525, 102 Stat. 2609.

(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.

The order in which former section 321 of the Act requirements are fulfilled is irrelevant, as long as all requirements are satisfied before the applicant's 18th birthday. *See Matter of Douglas*, 26 I&N Dec. 197 (BIA 2013); *Matter of Baires-Larios*, 24 I&N Dec. 467, 470 (BIA 2008).

The burden of proof is 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)).

We conduct 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.

Analysis

Former Section 309 of the Act

The applicant failed to establish that he was legitimated by his father prior to his 21st birthday pursuant to the laws in Guyana. The applicant contends that the 2009 enactment of the Status of Children Act in Guyana, which eliminates distinctions between legitimate and illegitimate children, applies to children born before its enactment, and thus retroactively applies to the applicant; however, this legislation does not benefit the applicant because the change in law occurred after the applicant’s twenty-first birthday. The Board of Immigration Appeals (Board) explained in *Matter of Moraga*, 23, I&N Dec. 195, 199 (BIA 2001)(en banc), that even though a country may change its laws to confer legitimacy from birth on all children then living, for U.S. immigration purposes, the change must take place prior to the child reaching the age required for legitimation to occur under the applicable provision of the Act. *Id.* (citing *Matter of Hernandez*, 19 I&N Dec. 14, 17 (BIA 1983)). In 2009, the applicant was 44 years old and, therefore, unable to benefit under the changed law. At the time of the applicant’s birth, and prior to his 21st birthday, children born out of wedlock in Guyana could only be legitimated by the subsequent marriage of the parents. *See Matter of Rowe*, 23 I. & N. Dec. 962 (BIA 2006). The applicant

thus did not establish that he was legitimated in Guyana prior to his 21st birthday, as required by former section 309(a) of the Act.

The applicant also failed to establish that he was legitimated by his father prior to his 21st birthday pursuant to the laws in Florida, where, according to evidence in the file, the applicant's father resided.⁵ Legitimation in the State of Florida is established by the marriage of the parents, an adjudicatory hearing or proceeding, or a notarized voluntary acknowledgment of paternity acknowledging a child born out of wedlock. *See* Florida Statutes §§ 742.091, 742.10(1) and (3). The record contains no evidence to establish that the applicant's father complied with the statutory conditions for legitimation of the applicant under Florida law, as is required by former section 309(a) of the Act.

Because the applicant has not demonstrated that he was legitimated by his father prior to his 21st birthday, no purpose is served in evaluating whether the applicant's father met the physical presence requirements set forth in former section 301(a)(7) of the Act. *See* former section 309(a) of the Act (stating that former section 301(a)(7) of the Act only applied to children born out of wedlock if they met legitimation requirements).

Section 321 of the former Act

Although the record reflects that the applicant's mother is a surviving parent for former section 321(a)(2) of the Act purposes, and that the applicant resided in the United States pursuant to an admission for lawful permanent residence, as required under former section 321(a)(5) of the Act, the applicant does not satisfy former section 321(a)(4) of the Act because he was 18 at the time of his mother's naturalization on April 26, 1983. Citing to the U.S. Circuit Court of Appeals decision, *Poole v. Mukasey*, 522 F.3d 259 (2nd Cir. 2008) (citing *Calix-Chavarria v. Att'y General*, 182 F. Appx. 72 (3rd Cir. 2006)), the applicant indicates that the fact that his mother did not become sworn in as a naturalized U.S. citizen until after his 18th birthday should be disregarded for equity reasons, because her naturalization application was filed when he was 17, and the Service unreasonably delayed processing of her application.

The Second Circuit Court of Appeals decision, *Poole v. Mukasey*, *supra*, did not hold that U.S. Citizenship and Immigration Services may exercise equitable relief in a citizenship case, or grant U.S. citizenship to an applicant who does not meet statutory requirements for citizenship.⁶ Moreover, we have no jurisdiction over unreasonable delay claims arising under the Act or pursuant to constitutional due process claims. The AAO, like the Board of Immigration Appeals, is without authority to apply the doctrine of equitable estoppel so as to preclude a component

⁵ Although the applicant's father's death certificate reflects that he passed away in the State of Maryland on May 6, 1967, the death certificate states that the applicant's father's normal place of residence was in Florida.

⁶ The Third Circuit Court of Appeals decision, *Calix-Chavarria v. Att'y General*, 182 F. Appx. 72, *supra*; also does not make such a finding.

part of the Service from undertaking a lawful course of action that it is empowered to pursue by statute or regulation. *See Matter of Hernandez-Puente*, 20 I&N Dec. 335, 338 (BIA 1991).

The U.S. Supreme Court has held that strict compliance with statutory prerequisites is required to acquire citizenship. *See Fedorenko v. U.S.*, 449 U.S. 490, 506 (1981). Here, the applicant failed to establish that his mother became a naturalized United States citizen prior to his 18th birthday, as required by former section 321(a)(4) of the Act. The applicant therefore failed to establish his claim to U.S. citizenship under former section 321 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 not been met. The appeal is therefore dismissed.

ORDER: The appeal is dismissed.