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

Date: DEC 11 2014 Office: SANTA ANA, CA FILE:

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.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director of the Santa Ana, California 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 sustained and the matter returned for issuance of a certificate of citizenship to the applicant.

Pertinent Facts and Procedural History

The applicant was born in Egypt on May 20, 1996, and he was admitted into the United States as a lawful permanent resident on May 30, 2007, when he was 11 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 he derived citizenship through his U.S. citizen mother and father.

The director determined, in a decision dated March 26, 2013, that the applicant was ineligible for a certificate of citizenship under section 320 of the Act because neither his mother, nor his father was a U.S. citizen when his Form N-600 application was filed on May 8, 2012. The Form N-600 was denied accordingly. On appeal the applicant submits copies of his parents' naturalization certificates reflecting that they became naturalized U.S. citizens on September 21, 2012, and he indicates that he therefore qualifies for a certificate of citizenship under section 320 of the Act.

We conduct appellate review on a *de novo* basis.

Applicable Law

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 (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.

The regulation at 8 C.F.R. § 103.2(b)(1) provides, in pertinent part, that and applicant must "establish that he or she is eligible for the requested benefit at the time of filing the benefit request and must continue to be eligible through adjudication," and that "any evidence submitted in connection with a benefit request is incorporated into and considered part of the request." Under 8 C.F.R. § 320.3(b)(1)(iv), an applicant applying for citizenship under section 320 of the Act must submit evidence of U.S. citizenship of his or her parent.

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)).

Analysis

In the present matter, evidence in the record establishes that the applicant has resided in the United States with his mother and father pursuant to a lawful admission for permanent residence since 2007, when he was 11 years old. Moreover, although the record reflects that the applicant's parents became naturalized U.S. citizens after the applicant's Form N-600 was filed, the record also reflects that their naturalization occurred prior to the director's issuance of a final decision in the applicant's case. Because the applicant had automatically derived U.S. citizenship from his parents pursuant to section 320 of the Act at the time of the director's decision, the director's decision shall be withdrawn.

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 sustained and the matter returned to the director for issuance of a certificate of citizenship to the applicant.