



U.S. Citizenship  
and Immigration  
Services

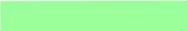
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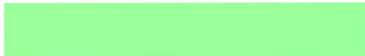
Date:

DEC 16 2014

Office: COLUMBUS, OH

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:

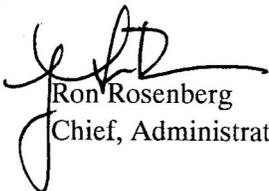


INSTRUCTIONS:

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 and the application will remain denied.

*Pertinent Facts and Procedural History*

The record reflects that the applicant was born in Ghana, and that he was admitted into the United States as a lawful permanent resident on April 27, 2011. 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 father.

The director determined, in a decision dated May 23, 2014, that the evidence in the record failed to establish that the applicant is the biological child of U.S. citizen, [REDACTED],<sup>1</sup> and that the evidence therefore also failed to establish that the applicant resided in the United States in the legal and physical custody of a U.S. citizen parent pursuant to a lawful admission for permanent residence. The Form N-600 was denied accordingly.

Through counsel, the applicant asserts on appeal that U.S. Citizenship and Immigration Services (USCIS) already determined under section 101(b)(1) of the Act; 8 U.S.C. § 1101(b)(1), that he was [REDACTED] “child” through the processing of the Petition for Alien Relative (Form I-130) and adjustment of status application, and that this determination should extend to him for the purpose of qualifying as [REDACTED]; “child” under section 101(c) of the Act; 8 U.S.C. 1101(c). Alternatively, the applicant asserts that the record establishes, by a preponderance of the evidence that he is the biological child of [REDACTED] and that he has satisfied the physical and legal custody requirements of 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.” *Minasyan v. Gonzales*, 401 F.3d 1069, 1075 (9<sup>th</sup> 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).

<sup>1</sup> [REDACTED] became a naturalized U.S. citizen on January [REDACTED].

Section 320 of the Act provides, in pertinent part, that:

- (a) 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 provides, in pertinent part, that for citizenship and naturalization 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 . . . .

Under section 101(a)(33) of the Act, 8 U.S.C. § 1101(a)(33), “[t]he term ‘residence’ means the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent.”

Legal custody vests “[b]y virtue of either a natural right or a court decree.” *Matter of Harris*, 15 I&N Dec. 39, 41 (BIA 1970). In the absence of a judicial determination or grant of custody in a case of a legal separation of the naturalized parent, the parent having actual, uncontested custody of the child is to be regarded as having “legal custody”. *See Matter of M*, 3 I&N Dec. 850, 856 (CO 1950).

In addition, the regulation provides, in pertinent part, at 8 C.F.R. § 320.1 that for section 320 of the Act purposes:

[T]he term *legal custody* refers to the responsibility for and authority over a child.

- 1) For the purpose of the CCA, the Service will presume that a U.S. citizen parent has legal custody of a child, and will recognize that U.S. citizen parent as having lawful authority over the child, absent evidence to the contrary, in the case of:

- i) A biological child who currently resides with both natural parents (who are married to each other, living in marital union, and not separated),
- ii) A biological child who currently resides with a surviving natural parent (if the other parent is deceased), or
- iii) In the case of a biological child born out of wedlock who has been legitimated and currently resides with the natural parent.

Strict compliance with statutory prerequisites is required to acquire citizenship. *See Fedorenko v. U.S.*, 449 U.S. 490, 506 (1981).

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*

The applicant asserts that because USCIS determined that he met the definition of “child” set forth in section 101(b)(1) of the Act for adjustment of status purposes, he automatically meets the definition of “child” as set forth in section 101(c) of the Act. The applicant provides no legal basis for his assertion. Moreover, the Board of Immigration Appeals (Board) clarified, in pertinent part, in *Matter of Guzman-Gomez*, 24 I. & N. Dec. 824, 826 (BIA 2009) that:

[T]he terms ‘child’ and ‘parent’ bear different meanings in citizenship cases than they do in other cases arising under the Act. Specifically, section 101(c) defines those terms in citizenship cases, while section 101(b) defines them for all other purposes, such as those involving the allocation of visas or the establishment of eligibility for certain forms of relief from removal that require a showing of hardship to a ‘child’.

The applicant must therefore establish that he qualifies as a “child” as defined in section 101(c) of the Act to derive citizenship through [REDACTED]. Furthermore, the applicant cannot qualify as the legitimated child of [REDACTED] unless the record first establishes that he is [REDACTED] biological child. *See Matter of Moraga*, 23 I&N Dec. 195, 197 (BIA 2001) (en banc) (stating that the inherent prerequisite to legitimation is a biological parent-child relationship.)

To establish that he is the biological child of [REDACTED] the applicant submits a birth certificate registered in [REDACTED] Ghana on April 11, 2005, reflecting that the applicant was born 11 years earlier, on July [REDACTED], to [REDACTED] (father) and [REDACTED] (mother), with the father listed as the informant of the child's birth. The record also contains a separately registered birth certificate, registered in [REDACTED] Ghana on July 2, 2002, reflecting that the applicant was born nine years earlier, on July [REDACTED] to [REDACTED] and [REDACTED] with the mother listed as the informant of the child's birth. The birth certificate registered in 2005 does not include a certification from the Registrar of Births that the certificate is a true copy of an entry from the Register of Births.

It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The applicant does not explain why he has two birth certificates when, according to birth registration procedure information provided by the Ghanaian government, "no birth should be reported for registration more than once."<sup>2</sup>

More importantly, the record contains a Ghanaian passport, issued on August 17, 1998, reflecting the applicant's date of birth as July [REDACTED]. Additionally, a B1/B2 non-immigrant visa issued to the applicant on June 27, 2001; the applicant's U.S. admission stamp, dated May 11, 2002; and his initial adjustment of status application (Form I-485) along with the biographic information form (Form G-325) also reflect a July [REDACTED] date of birth. The record contains no explanation regarding the date of birth discrepancies in the evidence. The date of the applicant's birth is critical to the applicant's eligibility to derive U.S. citizenship from his purported father because if he had been born on July [REDACTED], the applicant would have been over the age of eighteen on January 18, 2011, the date of his purported father's naturalization.<sup>3</sup>

In light of the evidence in the record regarding the July [REDACTED] date of birth, the late-registered birth certificates have diminished value, as 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). 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 regarding the delays in registering the applicant's birth; the record contains no evidence issued contemporaneously with the applicant's birth to establish that he is the biological child of [REDACTED] and the non-contemporaneous baptism, academic, medical and U.S. residence evidence issued after the applicant's admission into the United States, and contained in the

<sup>2</sup> [REDACTED]

<sup>3</sup> See also, [REDACTED] (The Netherlands embassy in Ghana states that under Ghanaian law, double registration of birth is not legally valid.)

record, fails to corroborate or establish the applicant's birth to [REDACTED]. Furthermore, the record contains unexplained, materially inconsistent documentation reflecting that the applicant was born on July [REDACTED] rather than on July [REDACTED]. Overall, the evidence fails to establish, by a preponderance of the evidence, that the applicant is the biological child of [REDACTED] or that he was born on July [REDACTED].<sup>4</sup>

The record also does not contain sufficient evidence of [REDACTED] legal custody of the applicant. Information indicates that the applicant's purported parents were married, and that they divorced prior to [REDACTED] naturalization as a U.S. citizen in January 2011. The record contains no marriage or divorce evidence for the parents, however. The record also lacks evidence of child custody arrangements that may have been included in a judgment of divorce. Furthermore, in the event that the applicant's parents were unmarried, the record lacks evidence establishing and clarifying this fact, and addressing whether the applicant was legitimated by [REDACTED] under either Ghanaian law or the law where [REDACTED] or the applicant resided.

Overall, the record fails to demonstrate by a preponderance of the evidence that the applicant is eligible to derive U.S. citizenship pursuant to section 320 of the Act through his purported father.

*Conclusion*

In these proceedings, it is the applicant's burden to establish eligibility for U.S. citizenship. 8 C.F.R. § 341.2(c).

**ORDER:** The appeal is dismissed. The application remains denied.

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<sup>4</sup> The director's RFE gave the applicant the option of submitting DNA evidence to establish his claimed father-child relationship; however, no DNA evidence was submitted.