



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: DEC 19 2014

OFFICE: PHILADELPHIA, PA

FILE: [REDACTED]

IN RE:

Applicant: [REDACTED]

APPLICATION:

Application for Certificate of Citizenship under Former Section 321 of the Immigration and Nationality Act; 8 U.S.C. § 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 Philadelphia, Pennsylvania Field Office (the director) denied the 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. The application will remain denied.

*Pertinent Facts and Procedural History*

The applicant was born to unmarried parents in Jamaica on [REDACTED] 1973. He was admitted into the United States as a lawful permanent resident on October 19, 1987, when he was 14 years old. His father became a naturalized U.S. citizen on March 14, 1987, when the applicant was 12 years old. The record reflects that his mother became a naturalized U.S. citizen on September 20, 1995, when the applicant was 22 years old. The applicant seeks a certificate of citizenship pursuant to former section 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432, on the basis that he derived U.S. citizenship through his father.

In a decision dated March 17 2014, the director determined that the applicant did not meet the conditions for derivative citizenship under former section 321 of the Act because his parents did not both become U.S. citizens prior to the applicant's 18<sup>th</sup> birthday; his parents were not legally separated; and his father was not a surviving parent.<sup>1</sup> The application was denied accordingly. Through counsel, the applicant asserts on appeal that the record establishes that his parents never married, that he lived in the United States in his U.S. citizen father's custody prior to turning 18, and that he therefore meets the requirements for derivative citizenship under former section 321 of the Act.<sup>2</sup>

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

*Applicable Law*

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 (3d Cir. 2005). Former section 321 of the Act is applicable to this case.<sup>3</sup>

<sup>1</sup> The director also found that the applicant failed to qualify for citizenship under former section 301 of the Act; 8 U.S.C. § 1401 because his father was not a U.S. citizen at the time of the applicant's birth. This finding is not contested on appeal.

<sup>2</sup> Counsel also asserts that the director erroneously determined that the applicant's parents were married; however, a review of the director's decision reflects that the director determined that the applicant's parents were unmarried.

<sup>3</sup> The Child Citizenship Act of 2000 repealed former section 321 of the Act; nevertheless, all persons who derived citizenship automatically under former section 321 of the Act, as previously in force prior to February 27, 2001, may apply for a certificate of citizenship at any time. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001).

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) 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 the 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) and *Matter of Baires-Larios*, 24 I&N Dec. 467, 470 (BIA 2008).<sup>4</sup>

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. 8 C.F.R. § 341.2(c). See also, *Matter of Baires-Larios*, *supra* at 468. The “preponderance of the evidence”

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<sup>4</sup> The applicant’s case arises in the Third Circuit Court of Appeals. In *Matter of Douglas*, the Board declined to follow *Bagot v. Ashcroft*, 398 F.3d 252, 257 (3d Cir. 2005) and *Jordon v. Attorney Gen. of U.S.*, 424 F.3d 320 (3d Cir. 2005) for cases arising within the Third Circuit on the issue of the order in which the requirements for citizenship must be fulfilled. The Board found that nothing in the legislative history of former section 321(a)(3) of the Act or the case law interpreting it was inconsistent with its published decision, *Matter of Baires-Larios*, 24 I&N Dec. 467 (BIA 2008). Following *Douglas*, we also apply *Baires-Larios* to cases arising in the Third Circuit for the proposition that a child who has satisfied the statutory conditions of former section 321(a) of the Act before the age of 18 has acquired United States citizenship, regardless of whether the naturalized parent acquired legal custody of the child before or after the naturalization. See *National Cable Telecomms. Ass'n v. Brand X Internet Servs.*, 545 U.S. at 982.

standard requires that the record demonstrate that the 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 was born out of wedlock. The sole means of legitimating a child born out of wedlock in Jamaica is the subsequent marriage of the child's parents. *See Matter of Hines*, 24 I&N Dec. 544 (BIA 2008). In the present matter, it is undisputed that the applicant's parents did not marry. The applicant was therefore not legitimated by his father under Jamaican law. The applicant was also not legitimated by his father in the State of Ohio, where his father resided, which requires marriage of the parents or a probate court decree of acknowledgement of paternity in order for legitimation to occur. *See* sections 2105.18, 3111.02, and 3111.03 of the Ohio Revised Code.

Because the applicant was born out of wedlock and his paternity was not established by legitimation, the applicable section of law here is the second clause of former section 321(a)(3) of the Act. Former section 321(a)(4) of the Act requires the applicant to demonstrate that his mother naturalized while he was under the age of eighteen. The record reflects that the applicant's mother did not become a U.S. citizen until September 20, 1995, when the applicant was 22 years old. Accordingly, the applicant is ineligible for a certificate of citizenship.

#### *Conclusion*

It is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act; 8 C.F.R. § 341.2(c). Here, the applicant has failed to meet his burden of proof.

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