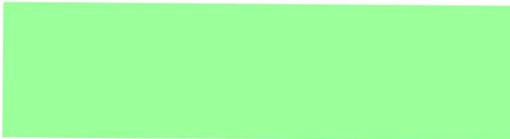


(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

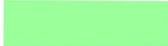


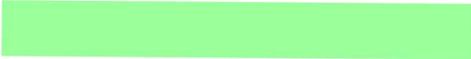
U.S. Citizenship
and Immigration
Services



DATE: **DEC 22 2014**

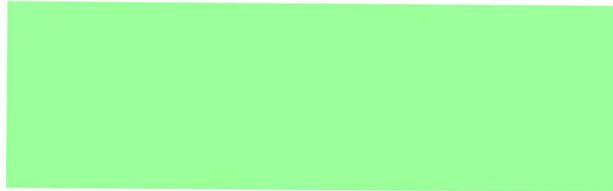
OFFICE: OAKLAND PARK, FL

FILE: 

IN RE: 

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:

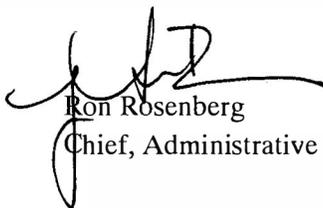


INSTRUCTIONS:

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.

Thank you,



Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director of the Oakland Park, Florida 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 sustained and the matter returned to the director for issuance of a certificate of citizenship to the applicant.

Pertinent Facts and Procedural History

The applicant was born in Jamaica on [REDACTED]. He was admitted into the United States as a lawful permanent resident on [REDACTED] when he was 12 years old. The applicant's mother became a naturalized U.S. citizen on [REDACTED], when the applicant was 14 years old. His father is not a U.S. citizen. 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, based on the claim that he derived U.S. citizenship through his mother.

In a decision dated December 4, 2013, the director determined that the applicant was not eligible for derivative citizenship under former section 321 of the Act because the applicant's birth certificate, as well as testimony he provided during a prior naturalization interview,¹ indicated that the applicant's parents were married at the time of his birth; and he failed to establish that his parents became legally separated, or that both parents were naturalized U.S. citizens. The director determined further that the applicant failed to establish eligibility for citizenship under section 320 of the Act, as amended, 8 U.S.C. § 1431, because he was over the age of 18 when the provision became effective on February 27, 2001. The application was denied accordingly.²

Through counsel, the applicant asserts on appeal that his father has not been involved in his life; he assumed during his naturalization interview that his parents had been married because his mother used his father's last name, [REDACTED], on his birth certificate; and he has since learned from his mother that his parents were never married. To support his assertions, the applicant submits affidavits from his mother and himself, United States marriage and divorce evidence for his mother, and a February 1977 letter from his father. Evidence discussing the "preponderance of the evidence" burden of proof standard is also submitted, and the applicant asserts that he has established, by a preponderance of the evidence, that his parents did not marry and that he derived U.S. citizenship through his mother pursuant to former section 321 of the Act.

On September 10, 2014, we issued a Request for Evidence (RFE) to the applicant for documentation from the Jamaica Registrar General Department (RGD) demonstrating that his parents did not marry in Jamaica. We also requested evidence that he resided in his mother's physical custody after her naturalization on [REDACTED], and prior to the applicant's 18th birthday on [REDACTED].

¹ The applicant filed an Application for Naturalization (Form N-400) on August 5, 2004. The application was administratively closed on October 5, 2005. A previous Form N-400, filed on December 7, 2000, was denied due to abandonment.

² The applicant does not contest his ineligibility for derivative citizenship under section 320 of the Act and, therefore, we will not further discuss this section of law.

The applicant responded to the RFE with the requested documentation, which has been incorporated into the appellate record.

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. *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.³

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 Baires-Larios*, 24 I&N Dec. 467, 470 (BIA 2008).

³ 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).

Under the Act, “[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.” Section 101(a)(33) of the Act, 8 U.S.C. § 1101(a)(33). “The term ‘legal separation’ can refer only to a situation where there has been a termination of the marital status. . . . [Where] the subject’s parents were not lawfully joined in wedlock, they could not have been legally separated.” *Matter of H*, 3 I&N Dec. 742, 744 (BIA 1949). *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).

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. at 468. *See also*, 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. *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 that he meets the requirements for deriving citizenship through his mother under the second clause of former section 321(a)(3) of the Act, because he was born out of wedlock and his paternity has not been established by legitimation. The record does not contain a marriage certificate or divorce decree for the applicant’s parents; however, the applicant’s birth certificate, registered with the Jamaica Registrar General Department on [REDACTED] indicates that the applicant’s parents may have been married at the time of his birth, in that it reflects that the applicant was born on [REDACTED] to [REDACTED] (father) and [REDACTED] maiden name [REDACTED] (mother). In addition, the record reflects that the applicant stated under oath during a naturalization interview, that his parents divorced when he was young; and the applicant concedes in an affidavit submitted on appeal, that he believed that his parents were married at the time of his birth, and that he may have stated at his [REDACTED] naturalization interview that his parents divorced when he was young and that his mother obtained legal custody.

To overcome the discrepancies in the record with regard to his parents’ marital status, the applicant states on appeal that he has learned from his mother that his parents never married. His mother states further, in an affidavit dated June 11, 2013, that although she used the applicant’s father’s last name at the time of the applicant’s birth, they were never married; her first marriage was to [REDACTED] in New York on [REDACTED]; and her second and final marriage was to [REDACTED] in Florida in [REDACTED]. The record now also contains evidence from the Jamaica Registrar General’s Department reflecting no record of a marriage between the applicant’s parents.⁴

⁴ The Jamaica Registrar General Department (RGD) states, in pertinent part, at: <http://www.rgd.gov.jm/about-us> that the RGD “is Jamaica’s sole repository of birth, death, marriage . . . records. The RGD is the only organisation in Jamaica which is responsible for registering vital events - births, fetal deaths, marriages and deaths” The RGD states further at: <http://www.rgd.gov.jm/vital-statistic> that it:

The applicant has established by a preponderance of the evidence that he was born out of wedlock, and that his parents did not marry. Because the sole means of legitimating a child born out of wedlock in Jamaica is the subsequent marriage of the child's parents, paternity of the applicant was not established by legitimation. *See Matter of Hines*, 24 I&N Dec. 544 (BIA 2008). The requirements contained in the second clause of former section 321(a)(3) of the Act have therefore been met. The record also contains naturalization evidence reflecting that the applicant's mother became a naturalized U.S. citizen on [REDACTED] when the applicant was 14 years old. The applicant therefore also meets the requirements contained in former section 321(a)(4) of the Act. In addition, the record establishes that the applicant was admitted into the United States as a lawful permanent resident on [REDACTED] when he was 12 years old, and school transcript evidence contained in the record reflects that the applicant attended high school and resided in Miami, Florida between [REDACTED]. The applicant therefore also meets the requirements set forth in former section 321(a)(5) of the Act.

The burden of proof rests on the claimant to establish the claimed citizenship by a preponderance of the evidence. *See* 8 C.F.R. § 341.2(c). Here, the applicant has established that all requirements for derivative citizenship under former section 321 of the Act have been met. Accordingly, the appeal will be sustained.

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. The matter is returned to the director for issuance of a certificate of citizenship to the applicant.

[E]ndeavours not only to capture all vital events (births, deaths as well as marriages) occurring in Jamaica, but also ensures that high integrity is maintained in recording, collating and presenting such data. In order to achieve the production of timely and useful Vital Statistics the collaboration of many groups in and related to the Agency is required. These groups include Local District Registrars (LDRs), who register the vital event of births and deaths; Marriage Officers, who perform the wedding ceremony and solemnize marriages[.]