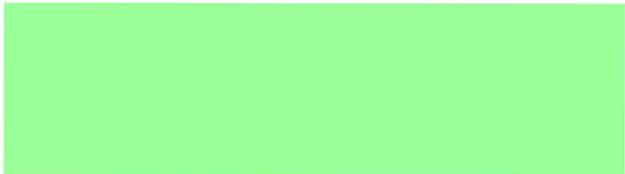


(b)(6)

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

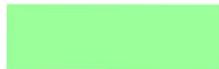


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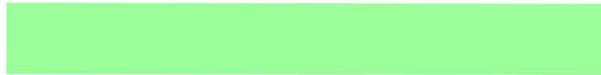
Office: SAN FRANCISCO, CA

FILE:



IN RE:

Applicant:



APPLICATION:

Application for Certificate of Citizenship under Section 320 of the Immigration and Nationality Act, 8 U.S.C. § 1431 (2013).

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. 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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The San Francisco, California Field Office Director (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 and the application will remain denied.

Pertinent Facts and Procedural History

The applicant claims to have been born on July 24, 1993 in Guinea-Bissau. The record contains evidence that the applicant was born two years earlier on July 24, 1991. The applicant's parents, [REDACTED] and [REDACTED] were married on July 27, 1991 and later divorced on May 4, 2001. The applicant's mother became a naturalized U.S. citizen on November 10, 2010. The applicant does not claim, and the record does not show, that his father is a U.S. citizen. The applicant became a lawful permanent resident on December 6, 2005. The applicant seeks a certificate of citizenship, on the basis that he derived U.S. citizenship through his mother pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The director denied the applicant's Form N-600 because the applicant failed to demonstrate that he was under the age of eighteen when his mother became a naturalized U.S. citizen, as required by section 320(a) of the Act. *See Decision of the Director*, dated July 8, 2013. The applicant filed a timely appeal and submitted additional evidence.

Applicable Law

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). 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. 467, 468 (BIA 2008).

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). The Child Citizenship Act of 2000 (CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), effective as of February 27, 2001, amended provisions of sections 320 and 322 of the Act, which apply only to persons who were not yet eighteen years of age on February 27, 2001. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). Regardless of whether the applicant was born in 1991 or 1993, he would have been under the age of eighteen on the effective date of the CCA. Thus, section 320 of the Act, as amended, is applicable in this case.

Section 320 of the Act provides, in part:

- (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.

Analysis

The record shows that the applicant satisfied some of the requirements of 320(a) of the Act prior to his eighteenth birthday, as required by statute. The applicant's mother is a naturalized U.S. citizen and the applicant resided in the United States in the legal and physical custody of his mother pursuant to a lawful admission for permanent residence. The issue in this proceeding is whether the applicant's mother's naturalization occurred prior to his eighteenth birthday. The applicant claims on his Form N-600 to have been born on July 24, 1993, and thus, asserts that he was seventeen years old when his mother naturalized on November 10, 2010. However, prior to and at the time of his 2005 admission as a lawful permanent resident, the applicant asserted that he was born on July 24, 1991, which necessarily means that the applicant was already nineteen years old at the time of his mother's November 2010 naturalization. Thus, he would not derive U.S. citizenship through his mother under section 320(a) of the Act if he was born in 1991, because he would have been over the age of eighteen at the time his mother naturalized.

The record contains a copy and translation of the applicant's birth certificate, issued May 18, 2001 by the [REDACTED] indicating that the applicant's birth on July 24, 1991 was contemporaneously registered in 1991 on page [REDACTED] Register [REDACTED]. This was also the date of birth listed on the applicant's passport issued on June 4, 2004; his 2004 nonimmigrant visa records; his immigrant visa application and associated forms; his Form I-94, Departure Record; his Form I-485, Application to Register Permanent Resident or Adjust Status; his Form G-325, Biographic Form; his Form I-751, Petition to Remove Conditions on Residence; and his 2008 Form I-90, Application to Replace Permanent Resident Card. Additionally, the record also contains a copy of the applicant's parents' divorce certificate from May 4, 2001, indicating that the applicant was nine years old at the time, which is consistent with his date of birth being in July 1991. If the applicant had been born in July 1993 as he now claims, he would only have been seven years old when his parents were divorced in May 2001. The AAO also obtained the applicant's mother's administrative record, which shows that she too listed the applicant's date of birth as July 24, 1991 on her 2010 Form N400, Application for Naturalization.

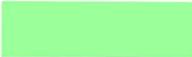
In August 2009, the applicant filed a second Form I-90 with a copy of only the translation of a new birth certificate also issued by the [REDACTED] on March 18, 2005, which indicated that the applicant's birth date was registered as July 24, 1993 in 2005 in Book [REDACTED] - Pluba, Registration No. [REDACTED]. Although only an incomplete translation was provided as evidence of the change in birthdate, United States Citizenship and Immigration Services (USCIS) mistakenly issued a replacement permanent residence card listing the new birthdate. In adjudicating the applicant's subsequent Form N-600, the director found the translation of the applicant's second birth certificate was insufficient to establish that the applicant was born in 1993 and was under the age of eighteen when his mother naturalized.

On appeal, the applicant submits copies of the January 28, 2005 birth registration with translation and

yet another certificate issued July 25, 2013 by the [REDACTED] confirming that the applicant's July 24, 1993 birth was registered in Book No. [REDACTED] - Pluba, Registry No. [REDACTED] in 2005. He also submits a copy with translation of the applicant's Child Health Card issued by the Ministry of Health, Republic of Guinea-Bissau, Registration Number [REDACTED] which lists the applicant's birth as July 24, 1993.

As noted, the burden of proof to establish a claim of U.S. citizenship lies with the applicant. See *Matter of Baires-Larios*, 24 I&N Dec. at 468. Here, the record shows that the applicant consistently utilized the earlier 1991 date of birth until 2009, when he turned eighteen years old and filed a Form I-90 using the later 1993 date of birth for the first time. On appeal, the applicant asserts that the 1993 birthdate is the correct date and maintains that the error resulted because his uncle prepared the papers necessary for his immigration rather than the applicant's mother, who was already in the United States. He states that his mother only noticed the error after the applicant arrived in the United States and that she was unsuccessful in correcting the mistake. However, the applicant does not elaborate on how the error in his date of birth occurred. He also offers no explanation for the existence of the applicant's 2001 birth certificate, which indicates a contemporaneously registered 1991 date of birth for him, or the applicant's 2004 Guinea-Bissau passport, which also lists a 1991 date of birth. Although the applicant has now proffered two new birth records of the 2005 registration of the applicant's alleged 1993 birthdate, there is no evidence on the face of the documents that the 2005 registration amended the earlier 1991 registration. Additionally, the 2005 birth registration record indicates that the statement of birth was made by the "parents of the register who signed" and that witnesses were present. However, in 2005, the applicant's mother was already in the United States at the time, along with the applicant. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Here, the noted discrepancies cast further doubt on the reliability of the applicant's evidence and assertion that his actual birthdate was in 1993.

The applicant also proffers "hospital records," which is in fact an uncertified vaccination record for the applicant from the first few months following his purported birth in 1993. The record does not contain any actual hospital records of the applicant's birth or any other medical or vital records from the twelve-year period that the applicant resided in Guinea-Bissau prior to immigrating to the United States. Further, although the applicant claims that his mother attempted to correct the error in his date of birth after the applicant's arrival in the United States, there is no evidence of such an attempt before USCIS. Further, contrary to the applicant's assertions, a review of the applicant's mother administrative file indicates that she herself listed the applicant's date of birth as July 24, 1991 in several of her own immigration applications, including her Form N-400; Form I-485 Adjustment of Status application; Form I-751; and her nonimmigrant and immigrant visa applications, namely Forms DS-156K and DS-230 Part I respectively. Accordingly, upon de novo review of the evidence, the applicant has not shown that he was under the age of the eighteen when his mother naturalized, and therefore, he does not meet the requirements of section 320(a) of the Act to derive citizenship through his U.S. citizen mother under that provision.



Conclusion

The applicant bears the burden of proof to establish his eligibility for citizenship under section 320 of the Act. 8 C.F.R. § 320.3. Here, the applicant has failed to meet his burden. Accordingly, the applicant is not eligible for a certificate of citizenship under section 320 of the Act, and the appeal will be dismissed.

ORDER: The appeal is dismissed and the application remains denied.