



U.S. Citizenship
and Immigration
Services

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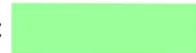


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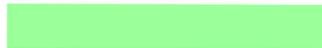
Office: KENDALL, FL

FILE:



IN RE:

Applicant:



APPLICATION:

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

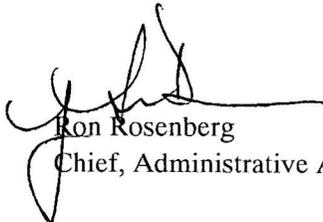
ON BEHALF OF APPLICANT:



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.

Thank you,



Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Kendall, Florida (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 The director's decision will be withdrawn and the matter remanded for entry of a new decision.

Pertinent Facts and Procedural History

The applicant was born in Colombia on June 12, 2002. The applicant's father, [REDACTED] became a U.S. citizen upon his naturalization on February 26, 2001. The applicant was admitted to the United States as a lawful permanent resident on November 30, 2011. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship through his father pursuant to section 320 of the Act, 8 U.S.C. § 1431, as amended.

The director denied the application finding that the applicant had failed to submit his parents' divorce certificate. The director found that the applicant was ineligible for U.S. citizenship under section 320 of the Act.

On appeal, the applicant, through his father, states that his parents were never married and therefore never divorced. *See* Statement of the Applicant on Form I-290B, Notice of Appeal or Motion. He maintains that he is eligible for a certificate of citizenship under section 320 of the Act. *Id.*

Applicable Law

We review these proceedings *de novo*. *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. *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 applicant and the director considered the applicant's citizenship claim under section 320 of the Act, which 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.

The record indicates that the applicant's father was a U.S. citizen at the time of the applicant's birth. Thus, this case falls squarely within the provisions of sections 301(g) and 309(a) of the Act, 8 U.S.C. §§ 1401(g) and 1409(a).

Section 301(g) of the Act states, in pertinent part, that the following shall be nationals and citizens of the United States at birth:

[A] person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years

Additionally, because the applicant claims that he was born out of wedlock, he is required to satisfy the requirements of section 309(a) of the Act, as amended, which state in relevant part:

(a) The provisions of paragraphs (c), (d), (e), and (g) of section 301 . . . shall apply as of the date of birth to a person born out of wedlock if-

- (1) a blood relationship between the person and the father is established by clear and convincing evidence,
- (2) the father had the nationality of the United States at the time of the person's birth,
- (3) the father (unless deceased) has agreed in writing to provide financial support for the person until the person reaches the age of 18 years, and
- (4) while the person is under the age of 18 years-
 - (A) the person is legitimated under the law of the person's residence or domicile,
 - (B) the father acknowledges paternity of the person in writing under oath, or
 - (C) the paternity of the person is established by adjudication of a competent court.

Remand

As noted above, the director considered the applicant's eligibility for U.S. citizenship under section 320 of the Act. The record, however, indicates that the applicant's father was a U.S. citizen at the time of the applicant's birth. Sections 301 and 309 of the Act may therefore apply.

The matter will be remanded to the director to determine whether the applicant acquired U.S. citizenship at birth. Specifically, the director will instruct the applicant to provide (1) clear and

convincing evidence of a biological relationship with his father, (2) evidence of acknowledgment or legitimation¹, and (2) a written statement from his father agreeing to provide for his financial support. The applicant will also be instructed to submit evidence of his father's physical presence in the United States for five years prior to 2002, two of which were after his fourteenth birthday. The director will then issue a new decision which, if adverse to the applicant, shall be certified to the AAO for review.

ORDER: The director's decision is withdrawn and the matter remanded for entry of a new decision, which if adverse to the applicant, shall be certified to the AAO for review.

¹ Under Florida law, legitimation only occurs upon the marriage of a child's natural parents. See Florida Statutes § 742.091. Under the law in Colombia, however, all legal distinctions between legitimate and illegitimate children have been abolished. See *Matter of Hernandez*, 19 I&N Dec. 14 (BIA 1983). Further, according to a September 1994 advisory opinion from the Library of Congress entitled "Children Born out of Wedlock in Colombia," a natural child may be acknowledged where, as in this case, the birth certificate includes the father's signature and recognition.