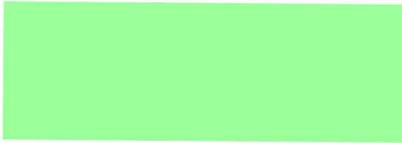




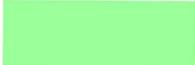
U.S. Citizenship  
and Immigration  
Services

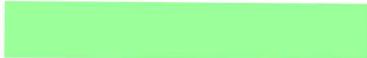
(b)(6)



Date: **JUN 16 2014**

Office: DENVER, CO

FILE: 

IN RE: Applicant: 

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:

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.

Thank you,



Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director of the Denver, Colorado 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 The director's decision will be withdrawn and the matter remanded for entry of a new decision.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 Mexico to married parents on January 1, 1981, and he was admitted into the United States as a lawful permanent resident on January 20, 1998, when he was 17 years old. The applicant's father became a naturalized U.S. citizen on February 6, 1997, when the applicant was 16 years old. His mother is not a U.S. citizen. The applicant presently 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 citizenship through his U.S. citizen father.

In a decision dated December 11, 2013, the director determined that the applicant was not eligible for derivative citizenship under section 320 of the Act, as amended, 8 U.S.C. § 1431, because he was over the age of 18 when the statutory provision became effective on February 27, 2001. The director determined further that the applicant was ineligible for derivative citizenship under former section 322 of the Act, 8 U.S.C. § 1433, because the Form N-600 was not filed prior to the applicant's 18<sup>th</sup> birthday. The application was denied accordingly. The director did not address the applicant's eligibility for derivative U.S. citizenship under former section 321 of the Act.

On appeal, the applicant acknowledges that he was over the age of 18 when his Form N-600 was filed, and that he therefore does not meet the requirements for derivative U.S. citizenship under former section 322 of the Act. The applicant indicates, however, that he qualifies for derivative U.S. citizenship through his father pursuant to former section 321 of the Act.

#### *Applicable Law*

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3rd Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

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). All persons who acquired citizenship automatically under section 321 of the former 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.

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). *See also*, 8 C.F.R. § 341.2(c) (the burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence.) The “preponderance of the evidence” standard requires that the record demonstrate that an 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*

It is undisputed that the applicant’s parents were, and remained, living and married prior to the applicant’s 18<sup>th</sup> birthday, and when the applicant’s father became a naturalized U.S. citizen on February 6, 1997. It is also undisputed that the applicant’s mother is not a U.S. citizen. The applicant has therefore failed to establish, by a preponderance of the evidence, that both of his parents became naturalized United States citizens prior to the applicant’s 18<sup>th</sup> birthday, as required under former section 321(a)(1) and (4) of the Act. Accordingly, the applicant does not meet the requirements for derivative citizenship under former section 321 of the Act.

The record also fails to demonstrate, by a preponderance of the evidence, that the applicant derived U.S. citizenship through his father under former section 322 of the Act, in that the statutory language contained in former section 322(b) of the Act provides that the citizenship application must be approved, and the applicant must take an oath of allegiance, prior to the applicant's 18<sup>th</sup> birthday.<sup>1</sup> See also, *Matter of Rodriguez-Tejedor*, 23 I&N Dec. at 155, *supra* (under former 8 C.F.R. § 322.2(a), "a child on whose behalf an application for naturalization has been filed [must be] . . . under 18 years of age, both at the time of application and at the time of admission to citizenship.") The applicant's Form N-600 was filed on November 26, 2012, when the applicant was 31 years old. The applicant is therefore ineligible for derivative citizenship under former section 322 of the Act.

The applicant also did not derive U.S. citizenship through his father under section 320 of the Act, as amended. Former section 320 of the Act was amended by the Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631 (CCA), and took effect on February 27, 2001.<sup>2</sup> The

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<sup>1</sup> Section 322 of the former Act stated, in pertinent part:

(a) Application of citizen parents; requirements

A parent who is a citizen of the United States may apply to the [Secretary] for a certificate of citizenship on behalf of a child born outside the United States. The [Secretary] shall issue such a certificate of citizenship upon proof to the satisfaction of the [Secretary] that the following conditions have been fulfilled:

- 1) At least one parent is a citizen of the United States, whether by birth or naturalization.
- 2) The child is physically present in the United States pursuant to a lawful admission.
- 3) The child is under the age of 18 years and in the legal custody of the citizen parent.

....

(b) Attainment of citizenship status; receipt of certificate

Upon approval of the application . . . [and] upon taking and subscribing before an officer of the Service within the United States to the oath of allegiance required by this chapter of an applicant for naturalization, the child shall become a citizen of the United States and shall be furnished by the [Secretary] with a certificate of citizenship.

<sup>2</sup> 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:

provisions of the CCA are not retroactive and section 320 of the Act, as amended, applies only to persons who were not yet 18 years old as of February 27, 2001. *See Matter of Rodriguez-Tejedor, supra*. The applicant was 20 years old on February 27, 2001. Section 320 of the Act therefore does not apply to his case.

The regulation at 8 C.F.R. § 341.2(c) states that the burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. Here, the applicant has not met his burden of proof of establishing derivative citizenship under former sections 321 and 322 of the Act; section 320 of the Act, as amended; or any other section of the Act. Where, as here, the applicant has failed to establish statutory eligibility for U.S. citizenship, a Certificate of Citizenship cannot be issued. *See Fedorenko v. U.S.*, 449 U.S. 490, 506 (1981) (strict compliance with statutory prerequisites is required to acquire citizenship.)

Beyond the director's decision, we note that the record contains a copy of a U.S. passport, issued to the applicant on December 6, 2007. In *Matter of Villanueva*, 19 I&N Dec. 101 (BIA 1984), the Board of Immigration Appeals held that a valid U.S. passport is conclusive proof of U.S. citizenship. As the applicant currently holds a valid U.S. passport, the matter must be returned to the director to request that the U.S. Passport Office review and decide whether to revoke the applicant's passport. Once the U.S. Passport Office has provided a response, the director shall enter a new decision into the record.

#### *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.

**ORDER:** The director's decision, dated December 11, 2013, is withdrawn. The matter is returned to the director for action consistent with this decision and entry of a new decision, which if adverse to the applicant, shall be certified to the AAO for review.

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- (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.