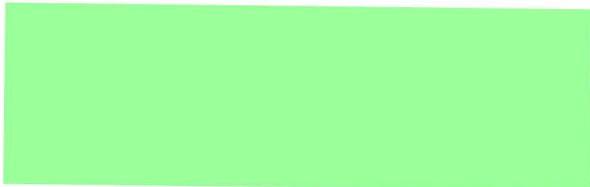




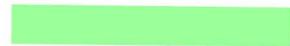
U.S. Citizenship  
and Immigration  
Services

(b)(6)



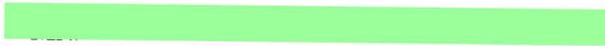
Date: MAR 06 2014

Office: SAN FRANCISCO, CA



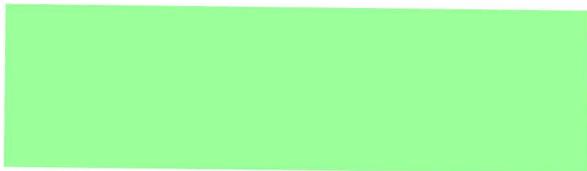
IN RE:

Applicant:



APPLICATION: Application for Certificate of Citizenship under Section 322 of the Immigration and Nationality Act; 8 U.S.C. § 1433.

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,

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

Ben Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director of the San Francisco, California Field Office (the director) approved the Application for Citizenship and Issuance of Certificate Under Section 322 (Form N-600K) and certified her decision to the Administrative Appeals Office (AAO) for review. The director's decision will be affirmed. The matter will be returned to the director for further processing of the Form N-600K.

#### *Pertinent Facts and Procedural History*

The applicant was born in France on December 21, 2012. Her parents, as indicated on her birth certificate, are [REDACTED]. The applicant's parents are not legally married. The applicant's father was born in France on March 21, 1981, but acquired U.S. citizenship at birth through his mother. The applicant's paternal grandmother, [REDACTED], was born in New York on September 24, 1946. The applicant, through her father, seeks a certificate of citizenship claiming that she acquired U.S. citizenship pursuant to section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433.

The director initially issued a Notice of Intent to Deny (NOID) the Form N-600K, citing *Matter of J*, 7 I&N Dec. 338, 339 (1956), where the Board of Immigration Appeals (Board) held that a child can only be legitimated upon the marriage of the natural parents. In response to the NOID, counsel submitted evidence that France had changed its legitimation laws since the Board's 1956 published decision, and the director subsequently obtained an opinion from the Library of Congress (LOC 2014-010059) regarding such changes. Based upon the LOC opinion, the director found that the applicant had been legitimated under French law and certified her decision to the AAO for review.

#### *Applicable Law*

The applicable law for derivative citizenship purposes is "the law in effect at the time the critical events giving rise to eligibility occurred." *See Minasyan v. Gonzales*, 401 F.3d 1069, 1075 (9<sup>th</sup> Cir. 2005). Section 322 of the Act, as amended by the Child Citizenship Act of 2000 (the CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), applies to this case. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001).

Section 322 of the Act provides, in pertinent part that:

- (a) A parent who is a citizen of the United States . . . may apply for naturalization on behalf of a child born outside of the United States who has not acquired citizenship automatically under section [320 of the Act]. The [Secretary of Homeland Security (the Secretary)] shall issue a certificate of citizenship to such applicant 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 United States citizen parent--

(A) has . . . been 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; or

(B) has . . . a citizen parent who has been 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.

(3) The child is under the age of eighteen years.

(4) The child is residing outside of the United States in the legal and physical custody of the applicant [citizen parent] (or, if the citizen parent is deceased, an individual who does not object to the application).

(5) The child is temporarily present in the United States pursuant to a lawful admission, and is maintaining such lawful status.

(b) Upon approval of the application (which may be filed from abroad) and, except as provided in the last sentence of section [337(a) of the Act], upon taking and subscribing before an officer of the Service within the United States to the oath of allegiance required by this [Act] 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.

\* \* \*

Section 101(c) of the Act, 8 U.S.C. § 1101(c) states, in pertinent part, that for naturalization and citizenship purposes under subchapter III of the Act:

The term "child" means an unmarried person under twenty-one years of age and includes a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in the United States or elsewhere . . . if such legitimation . . . takes place before the child reaches the age of 16 years . . . and the child is in the legal custody of the legitimating . . . parent or parents at the time of such legitimation . . . .

*Analysis*

As noted by the director, the Board held in *Matter of J* that: “[l]egitimation is regulated by the French Civil Code in Articles 331-333.” *Matter of J* states further that “Article 331 of the French Civil Code (Law of April 25, 1924) provides that children born out of wedlock . . . are legitimated by the subsequent marriage of their father and mother, when the latter have lawfully acknowledged them before their marriage, or when they acknowledge them at the time of its celebration.”

The LOC explains, however, that legitimation laws in France "changed substantially" in 2005. *See* LOC 2014-010059. According to the LOC, in 2009 the French Parliament ratified a 2005 executive ordinance to ensure the legal equality of all children regardless of the marital circumstances of their parents. Under current French law, a parental link between an out of wedlock child and her father can be established, in pertinent part, by voluntary recognition. *See Id.* at 2 (citing Article 310-1 of the French Civil Code). Voluntary recognition may occur “before, or any time after, a child's birth.” *Id.* (citing Article 316 of the French Civil Code).

Given the intervening substantial changes in France’s legitimation laws, the Board’s decision in *Matter of J* is inapplicable to this applicant, as she was born in 2012 after France’s Parliament ratified the 2005 executive ordinance. Her birth certificate indicates that she was recognized by both her father and mother before the Civil Registrar prior to her birth. Accordingly, the applicant has established that she was legitimated under French law such that she meets the definition of a child under section 101(c)(1) of the Act.

The applicant’s paternal grandmother has the required years of physical presence under section 322(a)(2)(B) of the Act, and the applicant meets all other required elements under section 322(a) of the Act to derive U.S. citizenship from her U.S. citizen father.<sup>1</sup>

*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 director's decision is affirmed. The matter is returned to the San Francisco Field Office for further processing of the Form N-600K under the regulations at 8 C.F.R. § 322.

---

<sup>1</sup> According to the record, the applicant is awaiting the AAO’s review of the director’s decision before making an entry into the United States so that she may comply with the regulation at 8 C.F.R. § 322.3(b)(1)(viii).