



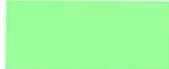
U.S. Citizenship
and Immigration
Services

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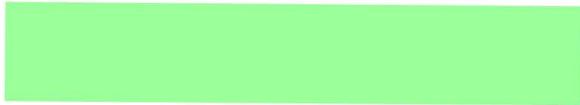


Date: **MAY 09 2014**

Office: PHILADELPHIA, PA

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:

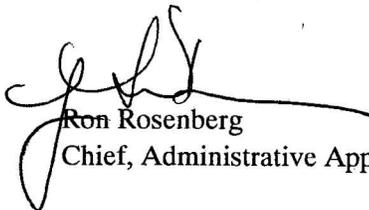
SELF-REPRESENTED

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. 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,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director of the Philadelphia, Pennsylvania 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 dismissed.

Pertinent Facts and Procedural History

The applicant was born in the Dominican Republic on March 25, 1980, and he was admitted into the United States as a lawful permanent resident on August 4, 1989, when he was nine years old. The applicant's father, now deceased, became a naturalized U.S. citizen on December 19, 1990, when the applicant was ten years old. His mother is not a U.S. citizen. The record reflects that the applicant's parents divorced on September 1, 1994, when the applicant was 14 years old. 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 citizenship through his U.S. citizen father.

In a decision dated November 13, 2013, the director determined that the applicant was not eligible for derivative citizenship under former section 321 of the Act, because he failed to establish that he was in his father's legal custody after his parents divorced, and prior to his 18th birthday. The application was denied accordingly. On appeal, the applicant asserts that evidence in the record demonstrates that he meets the legal custody requirements set forth in former section 321 of the Act.¹

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 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 in the applicant's case.

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

¹ The applicant also indicates on appeal that he is unable to obtain additional corroborative evidence because he is currently incarcerated. The regulation at 8 C.F.R. § 341.2(c) states that the burden of proof is on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. Despite his incarceration, the applicant still has the burden of establishing his claim to U.S. citizenship.

- (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 Douglas*, 26 I&N Dec. 197 (BIA 2013); *Matter of Baires-Larios*, 24 I&N Dec. 467, 470 (BIA 2008).² Strict compliance with statutory prerequisites is required to acquire citizenship. *See Fedorenko v. U.S.*, 449 U.S. 490, 506 (1981).

Analysis

The issue in the present case is whether the applicant was in his U.S. citizen father's legal custody after his parents divorced in 1994, and prior to the applicant's 18th birthday. The term, *legal separation* means "either a limited or absolute divorce obtained through judicial proceedings." *Matter of H*, 3 I&N Dec. 742, 744 (BIA 1949). Here the record reflects that the applicant's parents obtained a divorce in the Dominican Republic on September 1, 1994, and that

² In *Matter of Douglas*, the Board of Immigration Appeals (the Board) declined to follow *Bagot v. Ashcroft*, 398 F.3d 252, 257 (3d Cir. 2005) and *Jordon v. Attorney Gen. of U.S.*, 424 F.3d 320 (3d Cir. 2005) for cases arising within the Third Circuit on the issue of the order in which the requirements for citizenship must be fulfilled. The Board found that nothing in the legislative history of former section 321(a)(3) of the Act or the caselaw interpreting it was inconsistent with its published decision, *Matter of Baires*, 24 I&N Dec. 467 (BIA 2008). Following *Douglas*, we also apply *Baires* to cases arising in the Third Circuit for the proposition that a child who has satisfied the statutory conditions of former section 321(a) of the Act before the age of 18 has acquired United States citizenship, regardless of whether the naturalized parent acquired legal custody of the child before or after the naturalization. *See National Cable Telecomms. Ass'n v. Brand X Internet Servs.*, 545 U.S. at 982.

no child custody agreement was incorporated into, or made part of, the judgment. In the absence of a judicial determination or grant of custody in a case of a legal separation of the naturalized parent, the parent having actual, uncontested custody of the child is to be regarded as having legal custody. See *Matter of M*, 3 I&N Dec. 850, 856 (BIA 1950). The requirements for legal custody, as set forth in *Matter of M*, *supra*, apply to the applicant's case.

To establish that he was in his father's actual and uncontested custody after his parents divorced on September 1, 1994, and prior to his 18th birthday on March 25, 1998, the applicant submits affidavits and a hospital Patient Consent Form. The applicant's father stated in pertinent part, in an affidavit dated May 29, 2012, that he and the applicant's mother married in 1985; and that from the time of the applicant's birth "until [the applicant] was older," he was responsible for the applicant's, "economic costs relating to food, education, hospitals, housing, sporting and cultural." An undated statement signed by the applicant's mother states, in pertinent part, that she married the applicant's father on or about 1985; she came to the United States as a permanent resident on or about 1989, and lived with her husband, the applicant, and his sibling in New York; she divorced the applicant's father in the Dominican Republic on or about 1994; and the applicant was in his father's sole and actual custody in New York after her divorce.³ The applicant states, in pertinent part, in an affidavit dated, December 11, 2013, that he was in his father's sole legal custody after his parents' 1994 divorce, and that his father was in charge of all of his legal affairs in school and for medical care purposes.⁴

In ascertaining the evidentiary weight of affidavits, we must determine the basis for the affiant's knowledge of the information to which she or he is attesting; and whether the statement is plausible, credible, and consistent both internally and with the other evidence of record. See *Matter of E-M-*, 20 I&N Dec. 77 (Comm'r. 1989). In the present case, the affidavits contained in the record have diminished evidentiary weight. The applicant's father does not discuss or mention his divorce, or state where the applicant lived after the divorce; and the affidavits lack material detail regarding dates, and where, and with whom the applicant lived after his parents divorced. Moreover, the assertions made in the affidavits are uncorroborated by independent documentary evidence.

The burden of proof is on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. 8 C.F.R. § 341.2(c). Here, the applicant failed to establish, by a preponderance of the evidence, that he was in the actual, uncontested custody of his U.S. citizen

³ The applicant's mother's statement is not notarized, and the record lacks identity document evidence to demonstrate that she signed the statement.

⁴ The hospital Patient Consent Form is dated December 3, 1990, prior to the applicant's father's naturalization as a U.S. citizen, and prior to his parents' divorce. The document therefore lacks evidentiary value in the present case.

father after his parents' divorce in 1994, and prior to his 18th birthday. Accordingly, the applicant failed to establish his claim to U.S. citizenship under former section 321 of the Act.

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 not been met. The appeal will therefore be dismissed.

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