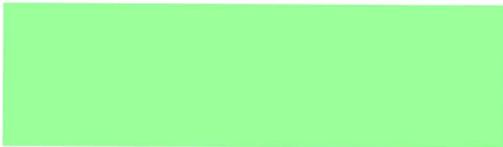




U.S. Citizenship
and Immigration
Services

(b)(6)

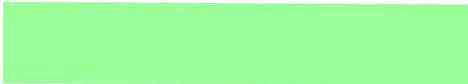


Date: **OCT 06 2014**

Office: ST. PAUL, MN

FILE: 

IN RE:

Applicant: 

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

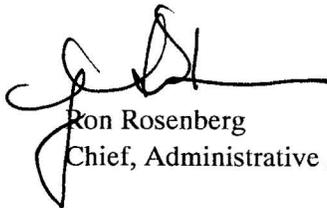
ON BEHALF OF APPLICANT:

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,

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

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director of the St. Paul, Minnesota Field Office (the director) denied the Form N-600, Application for Certificate of Citizenship (Form N-600), and the matter is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded to the director for further proceedings consistent with this decision and entry of a new decision.

Pertinent Facts and Procedural History

The record reflects that the applicant was born in the Ivory Coast on April [REDACTED], and that he was admitted into the United States as a lawful permanent resident on November [REDACTED] when he was 12-years-old. The applicant presently seeks a certificate of citizenship pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431, based on the claim that he derived citizenship through his U.S. citizen mother.

The director determined, in a decision dated November 5, 2013, that the applicant failed to comply with a Request for Evidence (RFE) asking for his Liberian birth certificate; U.S. Department of State guidance at: <http://travel.state.gov>, reflects that he can obtain birth certificate evidence from the Ministry of Health and Social Welfare in Liberia; and secondary evidence failed to establish that the applicant was the biological child of U.S. citizen, [REDACTED]. The Form N-600 was denied accordingly.

On appeal the applicant asserts that he was born to [REDACTED] in a refugee camp in [REDACTED] Ivory Coast; his mother was a Liberian refugee at the time of his birth and he is not a citizen of the Ivory Coast; he was not issued a birth certificate when he was born; and he is unable to obtain a birth certificate.

We conduct 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.

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.” *Minasyan v. Gonzales*, 401 F.3d 1069, 1075 (9th Cir. 2005). Section 320 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), took effect on February 27, 2001, and provides for automatic derivation of U.S. citizenship upon the fulfillment of certain conditions prior to a child’s 18th birthday. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). Section 320 of the Act applies to the applicant’s U.S. citizenship claim.

Section 320 of the Act provides, in pertinent part, that:

[REDACTED] became a naturalized U.S. citizen on March 25, 2009.

- (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 regulation at 8 C.F.R. § 320.3(b)(1) provides, in pertinent part, that, “[a]n applicant must submit the following supporting evidence . . . [t]he child’s birth certificate or record[.]” The regulation at 8 C.F.R. § 103.2(b) provides further that:

- (2)(i) [T]he non-existence or other unavailability of required evidence creates a presumption of ineligibility. If a required document, such as a birth . . . certificate, does not exist or cannot be obtained, an applicant or petitioner must demonstrate this and submit secondary evidence, such as church or school records, pertinent to the facts at issue. If secondary evidence also does not exist or cannot be obtained, the applicant or petitioner must demonstrate the unavailability of both the required document and relevant secondary evidence, and submit two or more affidavits, sworn to or affirmed by persons who are not parties to the petition who have direct personal knowledge of the event and circumstances. Secondary evidence must overcome the unavailability of primary evidence, and affidavits must overcome the unavailability of both primary and secondary 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). The “preponderance of the evidence” standard requires that the record demonstrate that the applicant’s claim is “probably true,” based on the specific facts of each case. *See 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

Availability of birth certificate

The applicant claims that he is the biological child of U.S. citizen, [REDACTED], however, the record does not contain a birth certificate for the applicant. In order to establish that his birth certificate is unavailable, the applicant submits a November 25, 2013 letter from

indicating that at the time of the applicant's birth she was a Liberian refugee in Ivory Coast; although born in the Ivory Coast, the applicant is not a citizen of that country; the applicant was not issued a birth certificate when he was born; and she has been unable to obtain a birth certificate for the applicant. Department of State Consular information confirms the likelihood that a child's birth in the refugee camp in the Ivory Coast would not be recorded, and that a birth certificate would be unavailable. The applicant therefore meets requirements contained in 8 C.F.R. § 103.2(b)(2), with regard to establishing the unavailability of his birth certificate.

Biological parent-child relationship

To establish his birth to the applicant submits a document that was used for refugee processing purposes entitled, "Supplementary Sheet for USPHS," stating that is the son of principal applicant, . The applicant also submits a court order from the District Court in Minnesota, dated August 25, 2004, reflecting his name change from " and stating that he is the child of . In addition, a friend, indicates in a letter dated November 26, 2013, that he was born in Liberia on January ; he knew Ivory Coast; and the applicant is the biological son of born in the refugee camp in Ivory Coast. A letter from dated November 26, 2013, also states, in pertinent part, that the applicant is the biological son of .

Overall, the evidence fails to establish, by a preponderance of the evidence, that the applicant is the biological child of . The record lacks evidence demonstrating how the District Court, or USPHS determined that the applicant is the son of or indicating that that they independently investigated the issue in order to make their determinations.

In ascertaining the evidentiary weight of affidavits, the Service must determine the basis for the affiant's knowledge of the information to which 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). The affidavits from and are vague with regard to the applicant's birth and circumstances. Neither affiant indicates how he has "direct personal knowledge of the event and circumstances" to which he attests. See 8 C.F.R. § 103.2(b)(2)(i). The affidavits therefore have diminished evidentiary value.

Nevertheless, because the director did not take into consideration that the applicant was born in a refugee camp in the Ivory Coast, and that his birth certificate is unavailable, the applicant was not offered an opportunity to present DNA testing results as secondary evidence of parentage over the applicant. The director's decision shall therefore be withdrawn and the matter remanded to the director for entry of a new decision. Upon remand,

the director shall provide the applicant with an opportunity to submit any available relevant evidence with regard to his citizenship claim, including the option of submitting DNA evidence from an accredited approved laboratory. Evidence that the applicant resided in the United States in the custody of a U.S. citizen parent prior to his 18th birthday should also be submitted.² If the applicant is found to be ineligible for citizenship under section 320 of the Act, the director shall certify the decision to the AAO for review.

ORDER: The matter is remanded to the director for further proceedings consistent with this decision and entry of a new decision which, if adverse to the applicant, shall be certified to the AAO for review.

² Section 101(a)(33) of the Act, 8 U.S.C. § 1101(a)(33) defines the term *residence* as a person's "place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent."