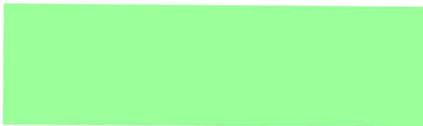




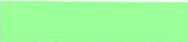
U.S. Citizenship  
and Immigration  
Services

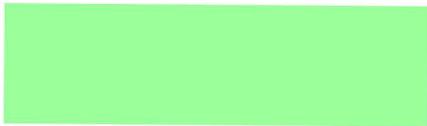
(b)(6)



DATE: **OCT 06 2014**

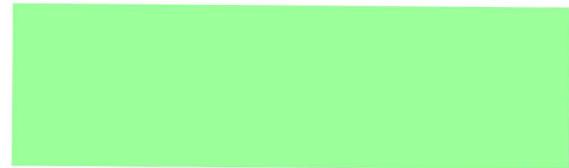
OFFICE: CHARLOTTE, NC

FILE: 

IN RE: 

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:

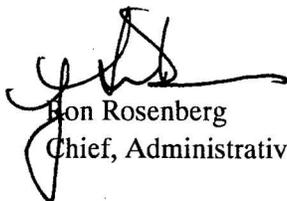


INSTRUCTIONS:

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 Charlotte, North Carolina 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. The application will remain denied.

*Pertinent Facts and Procedural History*

The applicant was born to unmarried parents in Liberia on [REDACTED]. He was admitted into the United States as a lawful permanent resident on March 28, 1982, when he was 14 years old. The applicant's father became a naturalized U.S. citizen on October 3, 1980, when the applicant was 13 years old. The record contains no evidence that the applicant has a U.S. citizen mother. 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 U.S. citizenship through his father.

In a decision dated October 16, 2013, the director determined that the applicant was not eligible for derivative citizenship under former section 321 of the Act, because he failed to credibly establish that his mother became deceased prior to his 18<sup>th</sup> birthday.<sup>1</sup> Through counsel, the applicant asserts on appeal that death certificate evidence establishes that his mother died in Liberia prior to his 18<sup>th</sup> birthday. The applicant asserts that inconsistencies in his mother's name, as contained in the death certificate and in his birth certificate, are reasonably explained by an affidavit and a scholarly article on naming practices in Liberia. He asserts further that it is unreasonable to expect contemporaneous birth certificate evidence for his mother, due to passage of time and because Liberia is a war-torn country.

We conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d. 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 that in effect at the time the critical events giving rise to eligibility occurred. *See 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 to this case.<sup>2</sup>

---

<sup>1</sup> The applicant filed a previous Form N-600 on March 19, 2001. The application was denied on July 24, 2007, and the matter was not appealed. The regulation at 8 C.F.R. § 341.6 states that after an application for a certificate of citizenship has been denied and the appeal time has run, a second application submitted by the same individual shall be rejected, and the applicant shall be instructed to file a motion to reopen or reconsider the denial of the first application. In this case, the director appears to have treated the applicant's Form N-600, filed in August 2011, as a motion to reopen and reconsider.

<sup>2</sup> The Child Citizenship Act of 2000 repealed former section 321 of the Act; nevertheless, all persons who derived citizenship automatically under former section 321 of the 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 states, 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.

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 Baires-Larios*, 24 I&N Dec. 467, 470 (BIA 2008).

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

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.

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. 8 C.F.R. § 341.2(c). *See also, Matter of Baires-Larios*, 24 I&N Dec. 467, 468 (BIA 2008). 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. *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**Section 101(c) of the Act*

It is uncontested that the applicant's parents did not marry. The applicant established, however, that he satisfies the definition of *child* as set forth in section 101(c) of the Act, in that his father had a natural right to legal custody over the applicant; and the record contains a copy of the applicant's birth certificate with the applicant's father's name, as well as a court legitimation decree reflecting that the applicant's father legitimated him in Liberia in December 1980, when the applicant was 13 years old. *See Matter of Duncan*, 15 I&N Dec. 272 (BIA 1975) (Legitimation in Liberia is established by a certified copy of the court order of legitimation while the child is under age 18, a certified copy of the registration of the beneficiary's birth, and a court order certifying the child's natural father.) Because the applicant established that he was legitimated by his father, as set forth in section 101(c) of the Act, he meets the definition of a *child*.

*Former section 321(a)(2) of the Act*

The applicant asserts that he meets the conditions contained in former section 321(a)(2) of the Act because evidence establishes that his mother died prior to his 18<sup>th</sup> birthday. To establish his claim, the applicant submits a death certificate, dated October 21, 1984, reflecting that [REDACTED] died in Monrovia, Liberia on October 21, 1984. A birth certificate, registered at the [REDACTED] on June 13, 2011, reflects that [REDACTED] was born in Liberia on September 13, 1950. The applicant's birth certificate reflects, however, that his mother's name is [REDACTED]

To clarify the discrepancy in his mother's name, the applicant asserts that [REDACTED] were the same person; name changes in Liberia are done informally and not through a legal proceeding, as demonstrated by a scholarly article on naming practices within a rural [REDACTED] community in the [REDACTED] of Liberia; and his mother's name change is verified by an affidavit, his mother's birth and death certificates, and his birth certificate.<sup>3</sup> The applicant also asserts that it is unreasonable to expect additional evidence of his mother's name change because she died over 30 years ago and Liberia is a war-torn nation. The applicant cites *Matter of S-M-J*, 21 I&N Dec. 722 (BIA 1977), for the proposition that requiring evidence from persons from regions undergoing war and susceptible to asylum conditions is over burdensome, as well as *Secaida-Rosales v. INS*, 331 F.3d 311 (2d Cir. 2003), which provides that in asylum cases, credible "testimony alone may be sufficient due to the difficulty of procuring corroborating evidence." *Id.*

The applicant's reliance on asylum-related decisions is misplaced. In citizenship cases, an applicant, born abroad, is presumed to be an alien and bears the burden of establishing his claim to U.S. citizenship by a preponderance of credible evidence. 8 C.F.R. § 341.2(c). *See also, Matter of Baires-Larios, supra.* 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.

---

<sup>3</sup> The applicant also asserts that his mother's name change is explained by certified documents from the U.S. Consulate; however, no such documents are contained in the record.

*Matter of Chawathe, supra.* Strict compliance with statutory prerequisites is required to acquire citizenship. *See Fedorenko v. U.S.*, 449 U.S. 490, 506 (1981).

In the present matter, the birth and death certificates contained in the record do not state or reflect that [REDACTED] are the same person. The scholarly article also fails to establish countrywide informal naming practices in Liberia, that informal name changes can be used on official documents in Liberia, or that the applicant's mother was referred to as both [REDACTED] and [REDACTED]. The affidavit evidence in the record also has diminished evidentiary value.

In ascertaining the evidentiary weight of affidavits, we 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 affidavit contained in the record was signed by [REDACTED] on July 22, 2011, and states, in pertinent part, that he was acquainted with [REDACTED] she was the applicant's mother; [REDACTED] were the same person; and the applicant's mother took her uncle's surname, [REDACTED] in the 1960s when she lived with her uncle, and she was called [REDACTED] until the early 1970s, when she left her uncle's home and resumed using her father's last name, [REDACTED]. The affidavit lacks material detail with regard to the affiant's relationship to the applicant's mother, the basis of his knowledge about the applicant's mother and her uncle, and the circumstances and dates under which the applicant's mother allegedly used her uncle's last name.

The assertions made in the affidavit are also contradicted by other evidence in the record. Mr. [REDACTED] claims that [REDACTED] reverted back to using her father's last name, [REDACTED] in the early 1970s. However, the applicant's December 1980 Liberian court legitimation decree reflects that the applicant's mother's name is [REDACTED] and a sworn affidavit, dated February 8, 1982, reflects that the applicant's mother referred to herself, and signed her name as [REDACTED]. The applicant's March 16, 1982 immigrant visa application also reflects that his mother's name is [REDACTED]. Furthermore, the applicant states, in response to question number 9 on the Form N-600 that he signed under oath in March 2001, that his "mother's present name" is [REDACTED] and that her maiden name is [REDACTED]. He also states on the March 2001 Form N-600 that his mother presently "resides at Monrovia, Liberia."<sup>4</sup> The record also contains a letter from the applicant's father, faxed to the Service on June 16, 2009, stating that the applicant's mother passed away two weeks prior.

---

<sup>4</sup> The record contains a June 8, 2012 affidavit from the applicant, indicating that the attorney who prepared his first Form N-600 erroneously believed that he and his half-sister had the same mother; the attorney never asked him for information about his own mother; the attorney wrongly used information about his half-sister's mother when completing his Form N-600; and his mother is [REDACTED]. An appeal or motion based upon a claim of ineffective assistance of counsel requires that the claim be supported by an affidavit of the allegedly aggrieved party setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard; that counsel whose competence is being impugned be informed of the allegations and be given an opportunity to respond; and that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not. *See Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1<sup>st</sup> Cir. 1988).

Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Here, the evidence fails to resolve the material inconsistencies contained in the record. Overall, the record fails to demonstrate, by a preponderance of the evidence, that [REDACTED] are the same person, and that the applicant's mother is deceased. Consequently, the applicant has not demonstrated his eligibility for citizenship under former section 321(a)(2) of the Act.

*Conclusion*

It is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act; 8 C.F.R. § 341.2(c). Here, the applicant has failed to meet his burden of proof.

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

---

The record contains no evidence that the applicant complied with the requirements for an ineffective assistance of counsel claim.