U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

DATE: OCT 27 2014 OFFICE: PHILADELPHIA, PA 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:

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. The application will remain denied.

Pertinent Facts and Procedural History

The applicant was born to unmarried parents in Jamaica on December He was admitted into the United States as a lawful permanent resident on May 27, 1993, when he was 12 years old. His father became a naturalized U.S. citizen on February 21, 1997, when the applicant was 16 years old. His mother is not a U.S. citizen. 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, and section 320 of the Act, as amended, 8 U.S.C. §1431.

In a decision dated April 9, 2014, 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 prior to his 18th birthday, his parents were legally separated; both parents became naturalized U.S. citizens; or his non-citizen mother was deceased. The director noted further that the applicant did not qualify for citizenship under section 320 of the Act because he was over the age of 18 when such amendments became effective on February 27, 2001. The application was denied accordingly.

The applicant asserts on appeal that he meets the requirements for derivative citizenship under former section 321 of the Act because prior to his 18th birthday, his father became a naturalized U.S. citizen; he resided in the United States pursuant to an admission for lawful permanent residence; and he was in his father's custody. He asserts further that he qualifies as the child of his U.S. citizen stepmother for derivative citizenship purposes because she was his legal guardian prior to his 18th birthday, and he qualifies as her child under section 101(b)(1)(B) of the Act; 8 U.S.C. § 1101(b)(1)(B). In addition, the applicant asserts that he meets the conditions for derivative citizenship under section 320 of the Act, and that section 320 of the Act should be applied retroactively to his case pursuant to the Child Status Protection Act (CSPA), Pub. L. No. 107-208 (Aug. 6, 2002) and Board of Immigration Appeals (Board) decisions.

We conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d. Cir. 2004).

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.[1]

[1] 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 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.

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) and *Matter of Baires-Larios*, 24 I&N Dec. 467, 470 (BIA 2008).[2]

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, supra* at 468. The "preponderance of the evidence" standard requires that the record demonstrate that the applicant's claim is "probably true," based on

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[2] The applicant's case arises in the Third Circuit Court of Appeals. In *Matter of Douglas*, 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 case law interpreting it was inconsistent with its published decision, *Matter of Baires-Larios,* 24 I&N Dec. 467 (BIA 2008). Following *Douglas*, we also apply *Baires-Larios* 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.

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

Former Section 321 of the Act.

The applicant seeks to derive U.S. citizenship through his father; however, the applicant has not established that his father's paternity was established through legitimation under the laws of Jamaica. *See Matter of Hines*, 24 I&N Dec. 544 (BIA 2008). The legitimation laws of New York, where the applicant resided after immigrating to the United States, also requires the marriage of the natural parents of a child born out of wedlock for legitimation to occur. *See Matter of Levy,* 17 I&N Dec. 539 (BIA 1980) (citing *Matter of Reyes,* 16 I&N Dec. 475 (BIA 1978) and *Matter of Bullen,* 16 I&N Dec. 378 (BIA 1977)). The applicant therefore cannot derive citizenship through his father under former section 321 of the Act.

Section 320 of the Act

The applicant also failed to establish that he derived citizenship through his father under section 320 of the Act. 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. The CCA benefits all persons who did not reach their 18th birthday as of February 27, 2001. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). The applicant was 20 years old on February 27, 2001 and he, therefore, cannot derive U.S. citizenship from his father under this section of law.[3]

The requirements for citizenship set forth in the Act are statutorily mandated by Congress, and U.S. Citizenship and Immigration Services lacks authority to issue a certificate of citizenship when an applicant fails to meet the statutory provisions for U.S. citizenship. *See Iddir v. INS,* 301 F.3d 492 (7th Cir. 2002). Here, the applicant failed to establish, by a preponderance of the evidence, that he meets the statutory requirements for citizenship under former section 321 of the Act, and cannot assert a claim to U.S. citizenship under section 320 of the Act. Accordingly, the appeal will be dismissed.

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

[3] The applicant's alternate argument that he can derive U.S. citizenship through his non-adoptive stepmother is similarly without merit. *See Matter of Guzman-Gomez*, 24 I&N Dec. 824 (BIA 2009).