



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **AUG 10 2015**

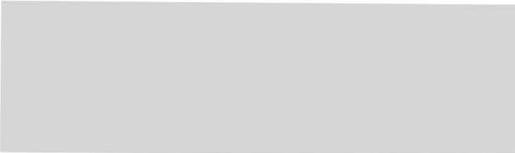
FILE #: [REDACTED]

APPLICATION RECEIPT #: [REDACTED]

IN RE: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under Section 320 of the Immigration and Nationality Act, 8 U.S.C. § 1431, and former Section 321 of the Act, 8 U.S.C. § 1432 (repealed)

ON BEHALF OF APPLICANT:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

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

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The District Director, New York, New York, denied the Application for Certificate of Citizenship (Form N-600), and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on [REDACTED] 1980, in Guyana to [REDACTED] and [REDACTED]. In support of his Form N-600, he claimed a different birth date of [REDACTED] 1983. In Guyana, the applicant's parents were married in 1979 and subsequently divorced on [REDACTED] 1995, and the applicant's mother married [REDACTED] a U.S. citizen at birth, on [REDACTED] 1995 in [REDACTED]. With his Form N-600 filing, the applicant claimed to have been adopted in Guyana on [REDACTED] 1997 by his mother's second husband, [REDACTED]. The applicant was lawfully admitted on May 21, 1997, as a conditional permanent resident. The applicant's mother became a U.S. citizen upon her naturalization on October 11, 2005. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship through his adoptive father under section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

On August 15, 2013, the director determined that the applicant was ineligible for citizenship under section 320 of the Act because he turned 18 prior to the February 27, 2001 effective date of this provision and further found the applicant failed to meet the requirements of former section 321, the applicable statute, because his mother failed to naturalize before he turned 18. On October 2, 2013, the applicant moved the director to reopen and reconsider his denial decision and submitted evidence in support of his newly-claimed birth date. The district director dismissed the motion. On appeal, the applicant asserts the director erroneously discounted evidence supporting his claim to have been born in 1983 and thus be eligible under section 320 and, therefore, applied the incorrect statutory provision.

We conduct appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). 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. *See Matter of Baires-Larios*, 24 I&N Dec. 467, 468 (BIA 2008).

As the applicant agrees that he is ineligible for citizenship under former section 321 of the Act, *see* Brief, February 9, 2015, we turn to his claim to citizenship pursuant to section 320 of the Act.

Section 320 of the Act, as amended by the Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631 (CCA), does not apply to the applicant unless the applicant establishes by a preponderance of the evidence that he was under 18 years old as of the February 27, 2001 effective date of the CCA. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153, 156 (BIA 2001) (en banc). Section 320(a) of the Act provides:

(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.

(b) Subsection (a) shall apply to a child adopted by a United States citizen parent if the child satisfies the requirements applicable to adopted children under section 101(b)(1).

The director determined that the overwhelming weight of the credible evidence established that the applicant's true date of birth was the [REDACTED] 1980 date used consistently by him since his 1997 admission to the United States until he first claimed in 2013 to have been born three years later on [REDACTED] 1983. After a detailed analysis, the director concluded that the applicant failed to meet the threshold requirement for eligibility under section 320 of the Act because he was unable to establish he was under 18 years old when it went into effect. The director noted and the applicant does not dispute that all his previously submitted documents and all representations to U.S. courts list his birthdate as [REDACTED] 1980. In addition, the director cited investigations by U.S. immigration officials in Guyana that determined, in consultation with Guyanese officials, that the 1983 birth certificate as well as the death certificate of the older brother who was allegedly born on [REDACTED] 1980, are both fraudulent documents.

Where the record reflects the applicant consistently maintained his date of birth to be [REDACTED] 1980, and as the only evidence explaining the existence of two birth certificates is the September 2013 sworn statement of the applicant's mother, we will not disturb the director's factual findings based on overseas investigation that the applicant's new birth certificate is suspect.¹ The affidavit consists of largely unverifiable statements regarding the death in infancy of an alleged older brother of the applicant whose identity the family claims it bestowed upon the applicant for emotional and cultural reasons. We note, however, that not only is corroboration of these claims lacking, investigation conducted in Guyana determined both the death certificate (of the claimed older brother) and the applicant's claimed actual birth certificate to be fake. In addition, a prior sworn statement by the applicant's mother dated October 17, 2012, failed to make any mention of these changed circumstances regarding the applicant's birth. She first mentioned the 1983 date of birth in her affidavit dated September 19, 2013, after an immigration judge had denied the applicant relief from removal and ordered the applicant removed to Guyana.

¹ Although the record contains a document regarding the applicant's [REDACTED] 1997 adoption by his mother's second husband in Guyana, that adoption order first entered the record when a copy issued on June 13, 2003 was filed with the applicant's Form N-600 in 2013. We need not consider further this document's credibility, however, where our finding that the weight of the evidence establishing his birth in 1980 makes him too old to derive citizenship upon his mother's 2005 naturalization under any relevant citizenship statute.

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NON-PRECEDENT DECISION

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As the applicant has not established by a preponderance of the evidence to have been under 18 years old on the February 27, 2001, effective date of the CCA, he did not acquire citizenship under section 320 of the Act. Further, as noted above, he did not meet the requirements to derive citizenship under former section 321 of the Act because his mother failed to naturalize before he turned 18.

It is the applicant's burden to establish the claimed citizenship by a preponderance of the evidence. Section 341(a) of the Act, 8 U.S.C. § 1452(a); 8 C.F.R. § 341.2(c). Here, that burden has not been met.

ORDER: The appeal is dismissed