



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: AUG 12 2015

FILE #: [REDACTED]

APPLICATION RECEIPT #: [REDACTED]

IN RE: Applicant: [REDACTED]

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

ON BEHALF OF APPLICANT:



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

Thank you,

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

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Hartford, Connecticut denied the application for certificate of citizenship. The matter was appealed to the Administrative Appeals Office (AAO), and the appeal was subsequently dismissed. We reopened the matter *sua sponte*, the decision to dismiss the appeal was withdrawn, and the applicant was issued with a request to provide further evidence. The matter is now before the AAO after receiving a response to the request for evidence. The appeal will be sustained.

The record reflects that the applicant was born on [REDACTED] in Jamaica to unwed parents, both of whom were citizens of Jamaica at the time of his birth. The applicant's father became a U.S. citizen upon his naturalization on January 22, 1993, when the applicant was five years of age. The applicant's father's name was added to the applicant's birth certificate in 1996. The applicant was admitted to the United States as a lawful permanent resident on July 18, 2002, when he was 15 years of age. The applicant's eighteenth birthday was on [REDACTED]. The applicant seeks a certificate of citizenship indicating that he derived U.S. citizenship through his father pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431, as amended by the Child Citizenship Act of 2000 (the CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000).

In a decision dated December 20, 2011, the field office director determined that the applicant did not derive U.S. citizenship through his father because he was not legitimated under Jamaican law and therefore was not a "child" for citizenship purposes. The Form N-600, Application for Certificate of Citizenship, was denied accordingly. *Id.*

We dismissed the applicant's appeal of the Field Office Director's decision on February 27, 2013, and, following a motion to reopen and reconsider, we upheld our decision to dismiss the appeal on October 31, 2013. The matter was subsequently reopened *sua sponte* and the previous decision to dismiss the appeal was withdrawn. We issued a request for the applicant to provide evidence that he was in his father's legal and physical custody after February 26, 2001, as required by Section 320(a)(3) of the Act. The applicant submitted school documentation for the 2002-2003 school year, and an affidavit from the applicant's mother.

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). The "preponderance of the evidence" standard requires that the applicant demonstrate the 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)).

The applicable law for derivative citizenship purposes is "the law 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). Section 320 of the Act, as amended by the Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631 (CCA), applies to this appeal because the applicant was under 18 years of age on

the effective date of the CCA, February 27, 2001. Section 320(a) of the Act, 8 U.S.C. § 1431(a), provides:

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 record indicates that the applicant was admitted to the United States as a lawful permanent resident and that his father naturalized prior to the applicant's eighteenth birthday.

For naturalization and citizenship purposes under subchapter III of the Act, section 101(c) of the Act defines the term "child" as:

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[.]

The record establishes that applicant qualifies as a "child" under section 101(c) of the Act. In *Matter of Cross*, 26 I&N Dec. 485 (BIA 2015), the Board of Immigration Appeals (the Board) held that a person born out of wedlock may qualify as a legitimated "child" of his or her biological parents under section 101(c)(1) of the Act, 8 U.S.C. § 1101(c)(1) (2012), for purposes of citizenship if he or she was born in a country or State that has eliminated all legal distinctions between children based on the marital status of their parents or had a residence or domicile in such a country or State (including a State within the United States), if otherwise eligible. The Board further held that the Jamaican Status of Children Act (JSCA) of 1976 eliminated all distinctions between children born in and out of wedlock. *Cross*, 26 I&N at 486. Thus, under *Cross*, a child born out of wedlock who was under 18 years of age on the effective date of the JSCA, or born on or after that date, qualified as the legitimated child of his or her father if the requirements for acknowledgment under Jamaican law were met before the child's 18th birthday.

In the present matter the applicant, similar to the applicant in *Cross*, claims to have derived citizenship through his naturalized father under operation of section 320 of the Act. In *Cross*, the Board stated that legitimation may be established in Jamaica by the biological father's acknowledgment of the child on the child's birth certificate. *Id.*, citing *Matter of Pagan*, 22 I&N

Dec. 547 (BIA 1999). The record demonstrates that the applicant's father added his name to the applicant's birth certificate on June 5, 1996, thus acknowledging the applicant as his child in accordance with Jamaican law. As such, the applicant has established that he is the legitimated child of his father for purposes of section 101(c)(1) of the Act.

Connecticut law defines "physical custody" as the physical care and supervision of a child. Conn. Gen. Stat. Ann. § 46b-115a. Legal custody refers to the responsibility for and authority over a child. 8 C.F.R. § 320.1. For purposes of the CCA, U.S. Citizenship and Immigration Services "will presume that a U.S. citizen parent has legal custody of a child, and will recognize that U.S. citizen parent as having lawful authority over the child, absent evidence to the contrary, in the case of... a biological child born out of wedlock who has been legitimated and currently resides with the natural parent." 8 C.F.R. § 320.1.

As discussed above, the applicant has demonstrated that he was born out of wedlock, and that he has been legitimated. The applicant has also shown that he was residing with his father after his admission to the United States. The evidence submitted includes school documentation for the applicant, indicated that he was enrolled in the public school system in ██████████ Connecticut, from August 28, 2002 (approximately one month after he entered the United States) until April 7, 2003, when he transferred to a school in ██████████ Connecticut. The school records listed the applicant's father as his parent (no mother's name was included), and indicate that the applicant lived at the same ██████████ Connecticut address as his father. In addition, the record includes an affidavit from the applicant's mother which indicates that she gave custody of the applicant to his father and that the applicant lived with his father from the time of his entry into the United States until he transferred ██████████ in 2003.

The statute does not require that the applicant show that he resided with his father for any particular amount of time, only that he demonstrate that he was in his father's legal and physical custody prior to his eighteenth birthday. Here, the record establishes, by a preponderance of the evidence, that the applicant was residing in his father's legal and physical custody pursuant to his lawful admission as a permanent resident while under the age of eighteen as is required under section 320(a)(3) of the Act.

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 been met.

ORDER: The appeal is sustained.