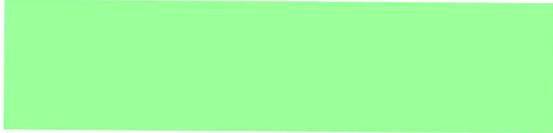




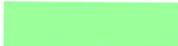
U.S. Citizenship  
and Immigration  
Services

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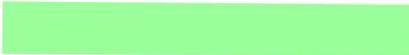


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Office: MIAMI, FL

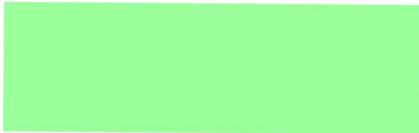
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IN RE:

Applicant: 

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.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg", is written over a horizontal line.

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director of the Miami, Florida 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 sustained and the matter returned to the director for issuance of a certificate of citizenship to the applicant.

*Pertinent Facts and Procedural History*

The applicant was born in Colombia to unmarried parents on [REDACTED], and she was admitted into the United States as a lawful permanent resident on [REDACTED] 1993, when she was [REDACTED] years old. The applicant's mother became a naturalized U.S. citizen on [REDACTED] 1997, when the applicant was [REDACTED] years old. Her father, who passed away in 1994, was 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, based on the claim that she derived citizenship through her mother.

In a decision dated March 14, 2013, the director determined that the applicant was ineligible for a certificate of citizenship under the second clause of former section 321(a)(3) of the Act because although she was born out of wedlock, her father established his paternity over her by legitimation and she, therefore, could not derive U.S. citizenship through her mother. The director determined further that the applicant failed to establish eligibility for derivative citizenship under section 320 of the Act, 8 U.S.C. § 1431, as amended by the Child Citizenship Act of 2000 (CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), because she was over the age of 18 when the CCA became effective on February 27, 2001. The application was denied accordingly.

On appeal, the applicant submits evidence of her father's death in Columbia in [REDACTED] 1994 and contends that she meets the requirements for derivative citizenship under former section 321(a)(2) of the Act as the child of a surviving parent. The applicant does not contest that she is ineligible for derivative citizenship under section 320 of the Act.

We conduct appellate review on a *de novo* basis. Our review reveals that the applicant has demonstrated her eligibility for derivative citizenship under former section 321(a)(2) of the Act as the child of a surviving parent.

*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.

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)

Because the applicant was born abroad, she is presumed to be an alien and bears the burden of establishing her claim to U.S. citizenship by a preponderance of credible evidence. *See Matter of Baires-Larios*, 24 I&N Dec. 467, 468 (BIA 2008). *See also*, 8 C.F.R. § 341.2(c) (the burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence.) 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*

The record reflects that the applicant was born out of wedlock but her paternity was established under the laws of Columbia by her father’s acknowledgement of the applicant at the time of her birth. *See Matter of Hernandez*, 19 I&N Dec. 14 (BIA 1998) (stating that Colombian law

provides equal rights to all acknowledged children born in Colombia). On appeal, the applicant submits her father's death certificate, registered in Colombia on [REDACTED] 1994, reflecting that her father died in Colombia on [REDACTED], 1994, when she was [REDACTED] years old. At the time of her mother's naturalization as a U.S. citizen on [REDACTED] 1997, the applicant was [REDACTED] years old and residing in the United States as a lawful permanent resident. Accordingly, the applicant meets the conditions of former subsections 321(a)(2), (4) and (5) of the Act. The applicant has therefore met her burden of establishing that she derived U.S. citizenship through her mother under former section 321 of the Act.<sup>1</sup> The appeal will therefore be sustained.

*Conclusion*

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 341 of the Act, 8 U.S.C. § 1452. Here, that burden has been met.

**ORDER:** The appeal is sustained. The matter is returned to the director for issuance of a certificate of citizenship to the applicant.

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<sup>1</sup> The record also contains a copy of a U.S. passport that was issued to the applicant by the U.S. Department of State on [REDACTED], 2007, valid until [REDACTED] 2017. In *Matter of Villanueva*, 19 I&N Dec. 101 (BIA 1984), the Board of Immigration Appeals held that a valid U.S. passport is conclusive proof of U.S. citizenship.