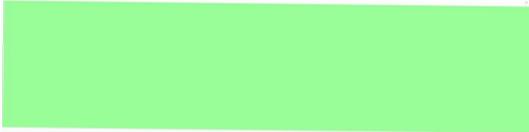




U.S. Citizenship  
and Immigration  
Services

(b)(6)

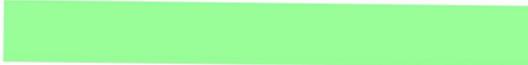


Date: **JAN 16 2015**

Office: COLUMBUS, OH

FILE: 

IN RE:

Applicant: 

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

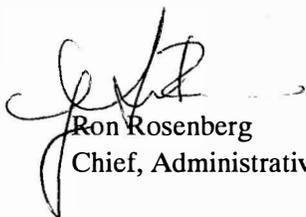
ON BEHALF OF APPLICANT:

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.

Thank you,



Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director of the Columbus, Ohio Field Office (the director) denied the Form N-600, Application for Certificate of Citizenship (Form N-600) and the matter is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded to the director for further proceedings consistent with this decision and entry of a new decision.

#### *Pertinent Facts and Procedural History*

The applicant claims that she was born in Ethiopia to married parents on January [REDACTED]. She was admitted into the United States as a lawful permanent resident on August 4, 1993. The applicant presently seeks a certificate of citizenship pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431, based on the claim that she derived citizenship through her U.S. citizen mother.

The director determined, in a decision dated February 18, 2014, that the applicant did not submit sufficient evidence of her biological relationship to her claimed U.S. citizen mother and denied the Form N-600 accordingly.

On appeal, the applicant submits a birth certificate and name change information for her alleged U.S. citizen mother. She indicates that the record now establishes, by a preponderance of the evidence, that she is the biological child of a U.S. citizen mother, and that she meets the requirements for citizenship under section 320 of the Act.

We conduct appellate review on a *de novo* basis.

#### *Applicable Law*

The applicable law for derivative citizenship purposes is “the law in effect at the time the critical events giving rise to eligibility occurred.” *Minasyan v. Gonzales*, 401 F.3d 1069, 1075 (9<sup>th</sup> Cir. 2005). Section 320 of the Act, as amended by the Child Citizenship Act of 2000 (the CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), took effect on February 27, 2001, and provides for automatic derivation of U.S. citizenship upon the fulfillment of certain conditions prior to a child’s 18th birthday. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001).

Section 320 of the Act provides, in pertinent part, that:

- (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.

The burden of proof is on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. 8 C.F.R. § 341.2(c). 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. *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)).

#### Analysis

To establish that she is the biological child of a U.S. citizen parent, the applicant submits on appeal a birth certificate, issued in [REDACTED] Ethiopia on June 1, 2014, reflecting that she was born on January [REDACTED] (father) and [REDACTED] (mother). Records of U.S. Citizenship and Immigration Services (USCIS) reflect that when she naturalized in [REDACTED] changed her name to “[REDACTED]”<sup>1</sup>

According to the applicant’s administrative record the applicant came to the United States as a refugee and is listed as part of [REDACTED] family on relevant refugee processing documents. The applicant’s U.S. school records from [REDACTED] through [REDACTED] also list [REDACTED] as the applicant’s parents. In addition, [REDACTED] note their former names in affidavits dated October 3, 2013, and state, in pertinent part, that the applicant is their biological daughter, born in Ethiopia on January [REDACTED]. Friends, [REDACTED] and [REDACTED] state, in pertinent part, in affidavits dated in January 2014, that they were family friends of [REDACTED] at the time of the applicant’s birth in Ethiopia, and that the applicant was born to the couple in Ethiopia on January [REDACTED].

The regulation at 8 C.F.R. § 320.3(b)(1)(i) requires an applicant for a certificate of citizenship to submit a birth certificate if one is not already in the record. The birth certificate that the applicant submits on appeal was issued in Ethiopia in January 2014, but it does not contain any information regarding the details of when the applicant’s birth was registered, and who were the informants of her birth. Without this information, it would appear that the applicant’s birth was not registered until the date the certificate was issued – January 6, 2014 – or [REDACTED] years after her alleged birth. The same evidentiary weight does not attach to a delayed birth certificate as would attach to one contemporaneous with the actual event. *See Matter of Lugo-Guadiana*, 12 I&N Dec. 726, 729 (BIA 1968). A delayed certificate must be evaluated in light of other

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<sup>1</sup> Because the applicant was not under the age of eighteen when her alleged father naturalized in [REDACTED] she may not derive U.S. citizenship through him. *See* Section 320(a)(2) of the Act.

evidence in the record and in light of the circumstances of the case. *See Matter of Bueno-Almonte*, 21 I&N Dec. 1029, 1033 (BIA 1997).

The affidavits from family friends, [REDACTED] do not provide probative information regarding the applicant's birth, and the record contains no evidence issued contemporaneous to the applicant's birth. As the record is presently constituted, the applicant has failed to establish, by a preponderance of the evidence, that she is the biological child of a U.S. citizen.

Nevertheless, the matter will be remanded to the director to allow the applicant an opportunity, if she so chooses, to submit DNA evidence from an accredited approved laboratory to support her claim of a biological relationship to her alleged mother, [REDACTED] U.S. Citizenship and Immigration Services (USCIS) policy allows field offices to suggest DNA testing when initial and secondary forms of parent-child related evidence have proven inconclusive. *See USCIS Policy Memorandum, PM-602-0106, DNA Evidence of Sibling Relationships for Service Centers, Domestic and International Field Offices* (October 17, 2014).<sup>2</sup> If an applicant chooses to submit DNA test results "a 99.5% statistical probability is required to establish parentage." *Id.* at p.2. The beneficiary may also submit additional evidence from the Registrar of Births in Ethiopia to establish when her birth was originally recorded or registered, and by whom.

The director's decision shall therefore be withdrawn and the matter remanded to the director for the issuance of a Request for Evidence and entry of a new decision.

### *Conclusion*

As always in these proceedings, the applicant has the burden of establishing her eligibility for a certificate of citizenship. 8 C.F.R. § 341.2(c)

**ORDER:** The matter is remanded to the director for further proceedings consistent with this decision and entry of a new decision.

<sup>2</sup> The DNA test results must be generated at a laboratory accredited by the American Association of Blood Banks (AABB) and:

[c]ommunication should be directly between the laboratory and the civil surgeon or panel physician or the field office. Under no circumstances should a third party, including the individuals being tested, be permitted to carry or transport . . . test results.

*Memorandum from Michael D. Cronin, Acting Ex. Assoc. Comm., Programs, HQADN, Guidance on Parentage Testing for Family-Based Immigrant Visa Petitions* (July 24, 2000). *See also*, *Memorandum from Michael L. Aytes, Assoc. Director, Domestic Operations, HQORPM AD07-25, Genetic Relationship Testing; Suggesting DNA Tests* (March 19, 2008).