



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **JUL 02 2015**

FILE #: [REDACTED]

APPLICATION RECEIPT #: [REDACTED]

IN RE: Applicant: [REDACTED]

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for Certificate of Citizenship under Former Section 321 of the Immigration and Nationality Act; 8 U.S.C. § 1432 (repealed)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


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Oakland Park, Florida, denied the application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant was born in Jamaica on [REDACTED]. The applicant was born out of wedlock to two Jamaican parents. The applicant's birth certificate indicates that his father's name was added to his birth certificate on August 15, 1985. The applicant was admitted to the United States as a lawful permanent resident on June 30, 1987, at the age of fourteen, based on the approval of a Form I-130, Petition to Classify Status of Alien Relative for Issuance of Immigrant Visa, filed by his father. The applicant's father became a U.S. citizen through naturalization on March 10, 1989, when the applicant was [REDACTED] years old. The applicant's parents were never married, and his mother was never admitted to the United States with lawful permanent resident status. The applicant seeks a certificate of citizenship, claiming that he derived U.S. citizenship through his father under former section 321(a) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432(a).

The Field Office Director determined that the applicant failed to establish eligibility for derivative citizenship as his parents were never married and his mother is not a U.S. citizen. The applicant's Form N-600, Application for Certificate of Citizenship, was denied accordingly. *See Decision of the Director*, dated July 17, 2014.¹

On appeal, the applicant, through counsel, contends that although his mother never naturalized, he qualifies for derivative citizenship pursuant to former section 321 of the Act based on a change to the law of Jamaica, the Jamaican Status of Children Act of 1976, which affected his status as a legitimated child.

The AAO conducts 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 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)).

The applicable law for derivative citizenship purposes is "the law in effect at the time the critical

¹ The applicant initially filed a Form N-600 on March 6, 2008, which was denied by the Field Office Director, Oakland Park, Florida, on August 12, 2009. The regulation at 8 C.F.R. § 341.5(3) provides that once a Form N-600, Application for Certificate of Citizenship, has been denied and the time for appeal has expired, USCIS will reject a subsequent application submitted by the same individual and the applicant will be instructed to submit a motion to reopen or reconsider in accordance with 8 C.F.R. § 103.5. As such, the Form N-600 filed by the applicant on April 28, 2014 will be considered a motion for reconsideration, as the application included reasons for reconsideration which were supported by pertinent precedent decisions.

events giving rise to eligibility occurred.” See *Minasyan v. Gonzales*, 401 F.3d 1069, 1075 (9th Cir. 2005). The Child Citizenship Act of 2000 (the CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), which took effect on February 27, 2001, amended sections 320 and 322 of the Act, and repealed section 321 of the Act. The provisions of the CCA are not retroactive, and the amended provisions of section 320 and 322 of the Act apply only to persons who were not yet 18 years old as of February 27, 2001. The applicant’s eighteenth birthday was on [REDACTED]. Because the applicant was over the age of 18 on February 27, 2001, he is not eligible for the benefits of the amended Act. See *Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001).

Former section 321 of the Act, in effect at the time the applicant became 18 years of age in [REDACTED] is therefore applicable in this case, and provided, in pertinent part, that:

- (a) a child born outside of the United States of alien parents, or of an alien parent and a citizen parent who has subsequently lost citizenship of the United States, 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 said child is under the age of 18 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 (2) or (3) of this subsection, or thereafter begins to reside permanently in the United States while under the age of 18 years.

Here, the applicant satisfied two of the requirements for derivative citizenship set forth in former section 321(a) of the Act before his eighteenth birthday. Specifically, the applicant was admitted to the United States as a lawful permanent resident when he was fourteen years old, and his father became a naturalized U.S. citizen when he was fifteen years old. However, the applicant’s mother is not a U.S. citizen. Thus, the applicant did not derive U.S. citizenship under former section 321(a)(1) of the Act, which requires the naturalization of both parents. The record also indicates that the applicant’s mother died in 2000, which was not prior to the applicant’s eighteenth birthday and he is consequently ineligible to derive U.S. citizenship from his father alone under former section 321(a)(2) of the Act. The applicant is also ineligible to derive citizenship through his father under the first clause of former section 321(a)(3) of the Act because his parents were never married, and therefore never “legally separated.” The term “legal separation,” as used in section 321(a)(3) of the former Act, means either a limited or absolute divorce obtained through judicial proceedings. *Nehme*

v. INS, 252 F.3d 415, 425-26 (5th Cir. 2001); *Matter of H*, 3 I&N Dec. 742, 743-44 (1949). If an applicant's parents were never married to each other, they could not have obtained a legal separation. *Matter of H*, 3 I&N Dec. at 744. See *Lewis v. Gonzales*, 481 F.3d 125, 130 (2d Cir. 2007) (listing cases and noting that "every other court confronted with the question has held that the first clause of § [321](a)(3) requires a legal separation even if the child's parents never married"). Further, the second clause of former section 321(a)(3) of the Act provides only for derivation of U.S. citizenship through the mother in the case of an out of wedlock child and the applicant's mother is not a U.S. citizen. See *Lewis v. Gonzales*, 481 F.3d 125, 130 (2d Cir. 2007); see also *Barthelemy v. Ashcroft*, 329 F.3d 1062 (9th Cir. 2003) (holding that the child of a U.S. citizen father could not derive U.S. citizenship when the child's parents were never married and therefore never legally separated).

The applicant, through counsel, contends that the enactment of the Jamaican Status of Children Act (JSCA) of 1976 abolished the concept of illegitimacy in Jamaica, and that the applicant was therefore legitimated, as legitimate children are treated exactly the same legally as illegitimate children. We note that the record contains further indication that the applicant was legitimated by his father, as the applicant's father took the affirmative action of having his name entered onto the applicant's birth certificate on August 15, 1985. Counsel states that as a result of the JSCA, there is no legal or material distinction between a child born of married or unmarried parents under Jamaican law.

However, the legitimacy of the applicant is not at issue in this case. While the legitimacy of the applicant would be relevant under current section 320 of the Act (see generally *Matter of Cross*, 26 I&N Dec. 485 (BIA 2015)), the applicant was over the age of 18 on February 27, 2001, and not eligible for the benefits of the Child Citizenship Act of 2000. As such, former section 321 of the Act is controlling in this matter.

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.