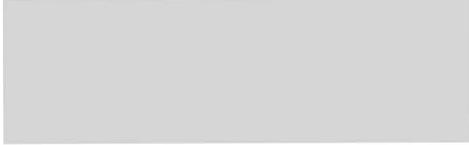




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **JUL 02 2015**

FILE #: [REDACTED]

APPLICATION RECEIPT #: [REDACTED]

IN RE: Applicant: [REDACTED]

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

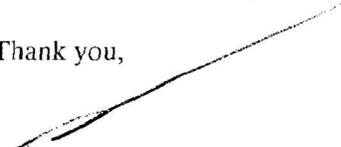
ON BEHALF OF APPLICANT:

NO REPRESENTATIVE OF RECORD

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, New Orleans, Louisiana, denied the application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born in Honduras on [REDACTED]. The record includes a birth certificate for the applicant indicating that he was born to a Honduran mother and an unknown father; thus, neither parent was a U.S. citizen at the time of the applicant's birth. On March 16, 2006, the applicant's mother married the applicant's stepfather. The applicant's stepfather became a U.S. citizen through naturalization on January 28, 2000. On November 18, 2010, the applicant entered the United States with an immigrant visa and was granted lawful permanent residency in the United States as the stepchild of a U.S. citizen. The applicant seeks a certificate of citizenship claiming that he derived U.S. citizenship from his stepfather pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The director denied the application because: (1) the applicant did not derive U.S. citizenship from his stepfather because his stepfather had not adopted him; and (2) the applicant did not submit evidence that he was in the legal and physical custody of his stepfather. *See Decision of the Field Office Director*, dated November 4, 2013.

On appeal, filed on November 16, 2013 and received by the AAO on January 5, 2015, the applicant's stepfather states that he has been the applicant's legal guardian since the applicant was born, that the applicant lived with him since his arrival in the United States, and that he has supported the applicant since birth. The applicant's stepfather presents additional evidence that the applicant was in his physical custody since the applicant's arrival in the United States in 2010.

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 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 not yet 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, 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 only supporting evidence in the record that the applicant is the biological son of his stepfather is a birth certificate registered on July 17, 2002, which lists his stepfather and mother as his parents. We note that this birth certificate was registered in 2002, [REDACTED] years after the applicant's 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 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). A delayed birth certificate, even where unrebutted by contradictory evidence, will not in every case establish an applicant's status as United States citizen. When United States citizenship is sought to be established through a delayed birth certificate each case must be decided on its own facts with regard to the sufficiency of the evidence presented as to an applicant's birthplace. *See Matter of Serna*, 16 I&N Dec. 643 (BIA 1978).

The record also includes a different delayed copy of the applicant's birth certificate, which indicates that it was issued on January 23, 2008, based upon the testimony of two witnesses who appeared before the Municipal Civil Registrar in the Municipality of [REDACTED] Honduras on June 28, 2007. The birth certificate lists the applicant's mother, but does not list a father for the applicant.

On July 23, 2007, the applicant's stepfather filed a Form I-130, Petition for Alien Relative (Form I-130) on behalf of the applicant. The Form I-130 was approved on April 8, 2008 on the basis that the beneficiary (the applicant) was the stepchild of the petitioner (the applicant's stepfather). The applicant subsequently entered the United States on November 18, 2010, at the age of [REDACTED]. The applicant signed Form DS-230, Application for Immigrant Visa and Alien Registration, (Form DS-230) on February 19, 2009. The Form DS-230 lists no father, and the applicant's immigrant visa indicates "father unknown."

The record reflects that the applicant mother and stepfather were married on [REDACTED] 2006 in Louisiana, when the applicant was nearly [REDACTED] years of age. The record also contains divorce certificates for prior marriages for both the applicant's mother and stepfather. A copy of a divorce certificate for the applicant's mother indicates that she divorced a prior spouse in 1997. A copy of the divorce certificate for the applicant's stepfather indicates that he divorced a prior spouse on [REDACTED] 2002.

In this particular case, the record contains two separate delayed birth certificates for the applicant, both containing different information concerning his paternity. The record also indicates that the applicant's mother and stepfather were previously married before their marriage to each other, which took place when the applicant was [REDACTED] years of age. It is noted that the applicant's stepfather was married to a person other than the applicant's mother up until the time the applicant was [REDACTED] years old. Further, as noted, an immigrant visa application signed by the applicant in 2009 does not include the name of a father. Based on the discrepancies in the record, we give little weight to the validity of the birth certificate in the record registered in 2002 and listing the applicant's stepfather as his father.

The applicant bears the burden of proof to establish the claimed citizenship by a preponderance of the evidence. Section 341 of the Act, 8 U.S.C. § 1452; 8 C.F.R. § 341.2(c). The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). In evaluating the evidence, *Matter of E-M-* also stated that "[t]ruth is to be determined not by the quantity of evidence alone but by its quality." *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, U.S. Citizenship and Immigration Services (USCIS) must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

In this particular case, a preponderance of the evidence indicates that the applicant is the stepchild of his mother's U.S. citizen spouse. Furthermore, there is no indication in the record that the applicant's stepfather has legally adopted the applicant.

The Board of Immigration Appeals has held that section 320(a) of the Act does not permit an individual to derive U.S. citizenship through a nonadoptive stepparent. *Matter of Guzman-Gomez*, 24 I&N Dec. 824, 829 (BIA 2009).

Section 320(b) of the Act, 8 U.S.C. § 1431(b), provides that the automatic acquisition of U.S. citizenship under section 320(a) of the Act "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)." Under section 101(b)(1) of the Act, there are three subsections that apply to adopted children: subsections (E), (F) and (G). 8 U.S.C. § 1101(b)(1)(E), (F), (G). Under subsection (E)(i), the only subsection potentially applicable in this case, the term "child" refers to "a child adopted while under the age of sixteen years if the child has been in the legal custody of, and has resided with, the adopting parent or parents for at least two years." Section 101(b)(1)(E)(i) of the Act.

Here, there is no evidence that the applicant was adopted by his U.S. citizen stepfather. Because the applicant may not derive U.S. citizenship through his relationship to a nonadoptive stepparent, he is not eligible for a certificate of citizenship under section 320 of the Act. See *Matter of Guzman-Gomez, Supra*, at 829.

As the applicant has failed to establish that at least one of his parents is a citizen of the United States, whether by birth or naturalization, as required by section 320(a) of the Act, we find it unnecessary to examine whether the applicant was in the legal and physical custody of his stepfather following his arrival in the United States.

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.