U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

DATE: JUL 06 2015

FILE #:
APPLICATION RECEIPT #:

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:

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

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Chicago, Illinois, denied the application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant was born on in Somalia. The applicant's birth certificate does not include the name of a father; only the name of the applicant's mother appears on the certificate. The applicant was admitted to United States as a lawful permanent resident on 2012, at the age of His father became a U.S. citizen upon his naturalization on November 6, 2008, when the applicant was old. The applicant seeks a certificate of citizenship claiming that he derived U.S. citizenship through his father.

The Field Office Director determined that, due to the fact that the applicant's father is not listed on his birth certificate, and discrepancies regarding the marital status of the applicant's claimed father, the applicant failed to establish that he was the child of his claimed father who became a naturalized U.S. citizen on November 6, 2008. The Form N-600, Application for Certificate of Citizenship, was accordingly denied. *See Decision of the Field Office Director*, dated January 30, 2014.

On appeal, filed on March 3, 2014, and received by the AAO on January 2, 2015, the applicant, through counsel, maintains that his claimed father is his natural father, and submits copies of DNA testing results as proof.

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 born after February 27, 2001, the 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.

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 indicates that the applicant was born on in Somalia. The record includes a copy of the applicant's birth certificate, which only lists the name of his mother; there is no father listed on the birth certificate. However, the applicant's father established his paternity of the applicant through DNA analysis, dated September 15, 2011. We note that the U.S. Consulate in Kenya, accepted the DNA analysis as proof of the father's paternity in issuing the applicant's immigrant visa on May 21, 2012.

Thus, the issue is whether the applicant meets the definition of being the legitimate child of his father, as prescribed under section 101(c) of the Act. The record indicates that applicant's father married his mother on 1996. The record further indicates that the applicant's father was involved in a polygamous relationship in Somalia, having married his first wife in on , 1985, whom he divorced on 2004. The Field Office Director stated that because the applicant's father was still married when he entered into the marriage with the applicant's biological mother, the latter marriage was invalid.

According to a 2013 Library of Congress (LOC) report, it appears that Somalia does not have any law addressing child legitimation, and generally follows Sharia law. *See* LOC Report 2013-009233. According to the LOC, "[e]ven though Sharia law does not, as a matter of law, allow for the legitimation of illegitimate children, the legitimation problem could potentially be easily resolved if the father is willing to acknowledge paternity without referring to the child being born out of wedlock." *Id.*

According to the 2013 LOC report, even if the applicant's parents' marriage were invalid due to the polygamous nature of the relationship, the applicant could still be his father's legitimate child as long as his father was willing to acknowledge paternity without referring to him as being born out of wedlock. The applicant's father marriage to the applicant's mother in 1996 is sufficient to demonstrate his willingness to acknowledge paternity of the applicant and there is no indication that he has referred to him as illegitimate.

Thus the applicant meets all of the requirements set forth in section 320(a) of the Act. The applicant's father became a citizen of the United States by naturalization on November 6, 2008, when the applicant was old. The applicant is in the legal and physical custody of his father, and has been residing in the United States pursuant to a lawful admission for permanent residence since 2012, when he was years old. The applicant is currently under the age of 18 years.

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.