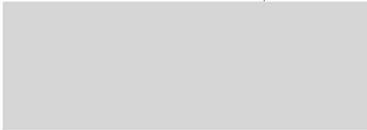




U.S. Citizenship  
and Immigration  
Services

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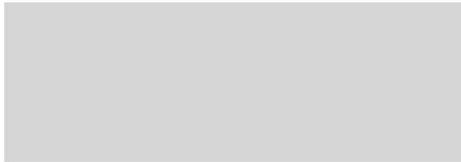
DATE: JUL 10 2015

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:



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

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

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

The applicant was born in Afghanistan. On September 8, 1999, he was admitted to the United States as the child of a refugee and in 2002 he was granted lawful permanent residency as of the date of his admission. The applicant's father became a U.S. citizen upon his naturalization on June 22, 2007. The applicant seeks a certificate of citizenship pursuant to section 320(a) of the Act, 8 U.S.C. § 1431, claiming that he acquired U.S. citizenship from his father, a naturalized U.S. citizen.

The sole issue in this case is the applicant's age at the time of his father's naturalization in June 2007. The applicant's entry documents and record of lawful permanent residency list his date of birth as [REDACTED] indicating that he was [REDACTED] years old at the time of his father's naturalization. However, on March 14, 2013, the applicant submitted Form N-600, Application for Certificate of Naturalization (N-600). On the Form N-600, the applicant asserted that his true date of birth is [REDACTED] which would make him [REDACTED] years old at the time of his father's naturalization and thus eligible for citizenship under section 320(a) of the Act. In support of the [REDACTED] date of birth, the applicant submitted an Afghani identification document indicating his date of birth as [REDACTED].

The Field Office Director determined that the evidence that the applicant was born in [REDACTED] did not outweigh the repeated iteration of [REDACTED] as his birth year in his immigration records and other documentation in the record, and determined that the applicant was ineligible for a certificate of citizenship because he was over the age of eighteen when his father naturalized. The Field Office Director denied the Form N-600 accordingly. *See Decision of the Field Office Director*, September 5, 2014.

On appeal, the applicant contends that his true date of birth is [REDACTED]. The applicant further contends that this date of birth is supported by the Afghani identification document, issued in 1992 and received by the applicant's father sometime in 2013 from an acquaintance in Afghanistan. In addition, the applicant submits affidavits from his father and mother stating that the applicant was born on the [REDACTED] day in the [REDACTED] of the year [REDACTED] according to the Afghanistan's Shamsi Hijri calendar, which translates to [REDACTED] in the Gregorian calendar.

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

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 (the CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), provides for automatic acquisition of U.S. citizenship upon the fulfillment of certain conditions prior to a child's eighteenth birthday. The CCA, which took effect on February 27, 2001, is not retroactive, and applies only to persons who were not yet 18 years old as of February 27, 2001. The applicant was under 18 years of age on the effective date of

the CCA, February 27, 2001. Thus, section 320 of the Act, as amended by the CCA, is applicable to this case.

Section 320 of the Act, as amended, 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 record clearly establishes that the applicant's father naturalized in June of 2007 and that the applicant was residing in the United States pursuant to a lawful admission for permanent residence at the time of his father's naturalization. The sole issue is whether or not the applicant was under the age of 18 at the time of his father's naturalization. The applicant claims on his Form N-600 to have been born on [REDACTED] and asserts that he was [REDACTED] years old when his father naturalized on June 22, 2007. However, prior to filing the Form N-600, all documentation submitted to the record indicates that the applicant was born on [REDACTED] so that he would have been twenty years old at the time of his father's June 2007 naturalization and unable to derive U.S. citizenship through his father under section 320(a) of the Act, as he would have been over age of eighteen at the time his father naturalized.

The record indicates that the applicant and seven other members of his family were interviewed for refugee status in Pakistan on May 22, 1999. The applicant's Form I-590, Registration for Classification as Refugee; Form I-94; Form I-485, Application to Register Permanent Resident and Adjust Status; and all documentation submitted in conjunction with the Form I-485 note his date of birth as [REDACTED]. Further, a copy of the applicant's driver license and an Afghani passport also note the applicant's date of birth as [REDACTED].

However, on the applicant's Form N-600, he indicated that his date of birth is [REDACTED]. The applicant submitted an Afghani identification document (Tazkera or Tazkira), a 20-page booklet issued on July 3, 1992 by the Census Office of the High Directorate for the Registration of Population in [REDACTED] Afghanistan, which notes the applicant's date of birth as [REDACTED]. In addition, the applicant submitted a copy of his Tazkira Identity Card, issued on February 1, 2014 by the Ministry of Interior Affairs of the Islamic Republic of Afghanistan. The identity card notes the applicant's date of birth as [REDACTED]. The record contains a letter from the Afghanistan embassy in [REDACTED] certifying the applicant's [REDACTED] date of birth based upon the Tazkira Identity Card.

The applicant's father submitted an affidavit stating that during the refugee interview on May 27, 1999, he told the interpreter that the applicant was born on the [REDACTED] day in the [REDACTED] of the year [REDACTED] according to the Afghanistan's Shamsi Hijri calendar, which translates to [REDACTED] in the Gregorian calendar, and that he does not know the reason why the applicant's year of birth was interpreted as [REDACTED] instead of [REDACTED]. The applicant's mother also submitted an affidavit stating that her recollection is that the applicant was born on the [REDACTED] day in the [REDACTED] of the year [REDACTED] according to the Afghanistan's Shamsi Hijri calendar. Depending on the specificity, detail, and credibility of an affidavit, letter or statement, USCIS may give the document more or less persuasive weight in a proceeding. The Board of Immigration Appeals (the Board) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the affected party to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

We note that the applicant was placed in removal proceedings pursuant to a Notice To Appear on September 26, 2014. On April 2, 2015, the immigration judge issued a memorandum and order to terminate the proceedings with prejudice, stating that the applicant and counsel from Department of Homeland Security agreed that termination was appropriate, as the applicant had demonstrated that he acquired U.S. citizenship. It is noted that an immigration judge's finding regarding the applicant's citizenship is not binding on these proceedings. Specifically, an immigration judge may credit an individual's citizenship claim in the course of terminating removal proceedings for lack of jurisdiction because the government has not established the individual's alienage by clear and convincing evidence. *See* 8 C.F.R. § 1240.8(a), (c) (prescribing that the government bears the burden of proof to establish alienage and removability or deportability by clear and convincing evidence). U.S. Citizenship and Immigration Services, on the other hand, retains sole jurisdiction to issue a certificate of citizenship, and the agency's decision is reviewable only by the federal courts, not the immigration courts. Sections 341(a) and 360 of the Act, 8 U.S.C. §§ 1452(a), 1503; 8 C.F.R. 341.1. *See also Minasyan v. Gonzalez*, 401 F.3d at 1074 n.7 (noting that the immigration court had no jurisdiction to review the agency's denial of Minasyan's citizenship claim).

If USCIS can articulate a material doubt that leads it to believe that the claim is probably not true, then USCIS may deny the application. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). However, even if USCIS has some doubt as to the truth, if the applicant submits relevant, probative, and credible evidence that leads the agency to believe that the claim is "probably true" or "more likely than not," the applicant has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (defining "more likely than not" as a greater than 50 percent probability of something occurring).

In this particular case, the applicant presented an Afghani identification document with a date of issue of July 3, 1992 by the Census Office of the High Directorate for the Registration of Population in [REDACTED] Afghanistan, and a copy of a Tazkira Identity Card, issued on February 1, 2014

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by the Ministry of Interior Affairs of the Islamic Republic of Afghanistan. Both documents list his date of birth as [REDACTED]. In addition, the applicant has submitted affidavits attesting to the fact that he was born on [REDACTED] and that the incorrect date of birth in [REDACTED] was the result of a mistranslation of the date from Afghanistan's Shamsi Hijri calendar to the Gregorian calendar. Though all preceding documentation in the record lists the applicant's date of birth as [REDACTED] the applicant has submitted relevant, probative, and credible evidence in support of his claimed [REDACTED] date of birth and has therefore has satisfied the more likely than not standard of proof.

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.