



U.S. Citizenship  
and Immigration  
Services

(b)(6)



Date:

**JUL 15 2015**

FILE:

APPLICATION RECEIPT #:

IN RE:

Applicant:

APPLICATION:

Application for Certificate of Citizenship under Former Section 321 of the Immigration and Nationality Act, 8 U.S.C. § 1432.

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

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](http://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 Orlando, Florida, Field Office Director denied the Application for Certificate of Citizenship (Form N-600) and the matter is now before the Administrative Appeals Office (AAO) on appeal.<sup>1</sup> The appeal will be dismissed.

### *Pertinent Facts and Procedural History*

The applicant was born on [REDACTED] in Jamaica. His mother was a national of Jamaica and his father was a national of Cuba born to two Jamaican parents.<sup>2</sup> The applicant's father became a U.S. citizen through naturalization on February 14, 1978. The applicant became a lawful permanent resident upon his December 7, 1976 admission to the United States on the immigrant petition of his stepmother.<sup>3</sup> There is no evidence the applicant's biological mother is a U.S. citizen. The applicant seeks a certificate of citizenship, claiming that he derived U.S. citizenship through his father. The director determined that the applicant had not established derivative citizenship under former section 321(a) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432, and issued a Request for Evidence (RFE) on July 5, 2014. The director denied the application for abandonment when the applicant failed to respond to the RFE by providing copies of documents including, but not limited to, his mother's birth certificate, her naturalization certificate, and evidence of his residences before turning 18. We note that, on appeal, the applicant stated he would provide the requested documents by February 1, 2015. There is no indication on record that he has submitted any further evidence.

### *Applicable Law*

The applicable law for derivative citizenship purposes is that in effect at the time the critical events giving rise to eligibility occurred. *Minasyan v. Gonzales*, 401 F.3d 1069, 1075 (9th Cir. 2005); *accord Jordon v. Attorney General*, 424 F.3d 320, 328 (3d Cir. 2005). Former section 321 of the Act, in effect at the time the applicant was born, became a lawful permanent resident, and turned 18, is applicable in this case. Former section 321(a) provided that:

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

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<sup>1</sup> The applicant initially filed a Form N-600 on April 17, 1986, which appears not to have been adjudicated. There is no record the application was rejected or that a decision issued. 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 there is no record a decision was issued on the application filed over 29 years ago, we deem the 2013 Form N-600 on appeal to be properly filed.

<sup>2</sup> Although the applicant claims his father was a Cuban citizen, his father's naturalization certificate indicates only that he is a former national of Cuba. The applicant provides no information about his mother on the Form N-600 and no birth certificate for her as requested, but his Jamaican birth certificate indicates she was born in Jamaica.

<sup>3</sup> Documentation shows that the applicant's father and stepmother married on [REDACTED] 1972. There are no documents on record showing that the applicant's stepmother adopted him.

(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 [emphasis added]; and if-

(4) Such naturalization takes place while such 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 (1) of this subsection, or the parent 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.

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

#### *Analysis*

In denying the application for abandonment, the director noted the type of information needed to establish eligibility under former section 321 of the Act and explained that absence of such supporting evidence rendered the application incomplete. The director also found lacking evidence that the applicant resided with his father before turning 18.

On appeal, the applicant fails to address the shortcomings noted in the denial decision, despite the nearly half year that has elapsed since the February 1, 2015 date by which he indicated he would submit the requested documents. After review, we note that, based on the evidence of record, there is no scenario whereby the applicant derived citizenship under former section 321(a) of the Act.

First, we note that although the applicant's father naturalized before he turned 18, there is no indication that the applicant's mother has naturalized or that she was deceased before he turned 18, and he therefore has not established he derived citizenship under subsection (1) or (2). As the applicant became a permanent resident at the age of [REDACTED] and was under 18 when his father naturalized, we look to the applicability of subsection (3) to confer citizenship.

The first clause of former section 321(a)(3) of the Act, which addresses derivation through naturalization of the parent having legal custody of the child when there has been a legal separation, does not apply here, as there is no evidence the applicant's parents ever married.<sup>4</sup> We note that the

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<sup>4</sup> "Legal separation" means either a limited or absolute divorce obtained through judicial proceedings. *See Matter of H*, 3 I&N Dec. 742 (1949); *see also, Nehme v. INS*, 252 F.3d 415, 425-26 (5th Cir. 2001). The U.S. Court of Appeals of for the Seventh Circuit held that under U.S. domestic relations laws, the term "legal separation" is defined as the judicial

applicant makes no claim they were married and, in fact, indicates on Form N-600 that his father's 1972 marriage to the applicant's stepmother was his first marriage.

Although the second clause of former section 321(a)(3) addresses derivation of citizenship by a child born out of wedlock, it only applies upon the naturalization of the mother, and only where the child has not been legitimated. There is no indication that the applicant's mother naturalized, and if so, that paternity of the applicant was not established by legitimation.

Given the applicant's failure to address on appeal the omissions the director raised in the denial decision, and based on the evidence on record, the applicant has not established he derived citizenship under former section 321 of the Act. The applicant does not allege, nor does the evidence indicate, that the applicant derived U.S. citizenship under any other provision of the Act.

*Conclusion*

The burden of proof rests on the claimant to establish the claimed citizenship by a preponderance of the evidence. See 8 C.F.R. § 341.2(c). Here, the applicant has not met this burden.

**ORDER:** The appeal is dismissed.

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suspension or dissolution of a marriage. *Wedderburn v. INS*, 215 F.3d 795, 799 (7th Cir. 2000) (citing *Matter of H-*, *Id.* at 743-44, which found that for derivative citizenship purposes, "legal separation" refers to a situation where there has been a termination of the marital status).