



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

Date: **JUL 29 2015**

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for Certificate of Citizenship under Former Section 321 of the Immigration and Nationality Act, 8 U.S.C. § 1432 (repealed).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

[Redacted]

INSTRUCTIONS:

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Thank you,


f/

Ron Rosenberg
Chief, Administrative Appeals Office

¹ The record contains new copies of a marriage certificate and a divorce decree for the applicant's parents accompanied by a transmittal letter from a different law firm than the applicant's counsel of record. As the applicant submits no new Form G-28 designating new counsel, we remit this decision to the applicant's existing counsel of record.

DISCUSSION: The Harlingen, Texas, 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. The matter will be remanded to the director for further proceedings consistent with this decision.

The applicant was born on [REDACTED] in Mexico to parents who were Mexican citizens. The applicant's mother became a U.S. citizen through naturalization on March 10, 1989, and the applicant became a lawful permanent resident on November 21, 1989 by adjusting status from that of nonimmigrant. The applicant's father is not a U.S. citizen. The applicant seeks a certificate of citizenship, claiming that he derived U.S. citizenship through his mother under of former section 321(a)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432 (repealed), claiming that he was born out of wedlock. Previously, the applicant had provided evidence his parents married on [REDACTED] and [REDACTED], and claimed to have derived citizenship from his mother under former section 321(a)(3) of the Act after the legal separation of his parents. The director denied the application because the marriage certificate and divorce decree the applicant submitted were determined by USCIS to be fraudulent documents.²

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 adjusted to status as a lawful permanent resident in 1989, is applicable in this case. Former section 321(a) of the Act 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
- (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

² Finding the applicant submitted fraudulent documents, the director stated, "USCIS is unable to determine whether your parents were married and/or divorced at the time that you obtain[ed] legal permanent residence." *Denial Decision*, February 13, 2015.

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).

In a detailed decision, the director discussed and addressed the evidence in the record, including the applicant's submission of a fraudulent marriage certificate and divorce decree for his parents. The divorce decree was submitted with the original Form N-600 filing, but the marriage certificate was provided in response to a Request for Evidence (RFE); the record reflects that the RFE was issued on January 13, 2013, after the applicant's mother testified during the applicant's Form N-600 interview that her 1970 marriage to his father had been annulled.

On appeal, the applicant asserted that his parents were not married to each other when he was born and claimed he derived citizenship upon his mother's naturalization due to his out of wedlock birth. However, after filing the appeal, the applicant recently submitted new copies of both the marriage and divorce documents, as well as new translations, but provided no explanation concerning the director's finding that the previous marriage and divorce records were fraudulent.

Given the prior submission of a marriage certificate and divorce decree found to be fraudulent and the applicant's failure to address on appeal the inconsistencies that the director raised in the denial decision concerning whether his parents had been married, it is not clear from the record whether the applicant derived citizenship from his mother under former section 321(a)(3) of the Act. As the applicant has submitted on appeal copies of new documents indicating his parents were married at the time of his birth and subsequently divorced, the matter will be remanded to the field office director to determine the authenticity of these documents and, if they are found to be genuine, whether he meets the requirements of section 321(a) of the Act. If the field office director issues a decision that is adverse to the applicant, the decision shall be certified to the AAO for review.

ORDER: The appeal is remanded for further proceedings consistent with this decision.