



U.S. Citizenship  
and Immigration  
Services

(b)(6)



Date: JUN 03 2015

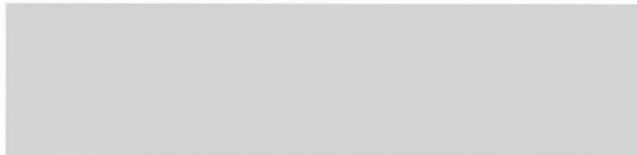
Office: OAKLAND PARK, FL

FILE: 

IN RE: 

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law or establish agency policy through non-precedent decisions.

Thank you,

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

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, Oakland Park, Florida, denied the Application for Certificate of Citizenship (Form N-600) and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

*Pertinent Facts and Procedural History*

The applicant was born out of wedlock in Jamaica on [REDACTED] and his parents never married. The applicant's father became a naturalized U.S. citizen on [REDACTED] when the applicant was two years old. His mother is not a U.S. citizen. The applicant was admitted to the United States as a lawful permanent resident on [REDACTED] when he was 15 years old. On [REDACTED] he filed a Form N-600 with U.S. Citizenship and Immigration Services (USCIS), seeking a certificate of citizenship pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The Field Office Director found that the applicant had not been legitimated by his father, and that the applicant therefore did not meet the definition of "child" under section 101(c)(1) of the Act, 8 U.S.C. § 1101(c)(1), so did not qualify as his father's "child" for section 320 of the Act purposes. See *Decision of the Field Office Director*, December 16, 2013.

On appeal the applicant asserts that he was legitimated by his father in Jamaica, that he meets the definition of "child" under section 101(c)(1) of the Act, and that he derived U.S. citizenship through his father accordingly.

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

*Applicable Law*

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), took effect on February 27, 2001, and provides for automatic derivation of U.S. citizenship upon the fulfillment of certain conditions prior to a child's 18th birthday. See *Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). Section 320 of the Act applies to the applicant's derivative citizenship claim.

Section 320 of the Act states, in pertinent part:

- (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.

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 burden of proof is on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. 8 C.F.R. § 341.2(c). 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)).

#### *Analysis*

The issue in the present matter is whether the applicant qualifies as a “child” under section 101(c) of the Act.

The Board of Immigration Appeals (the Board) recently issued a precedent decision which holds that a person born out of wedlock may qualify as a legitimated “child” of his or her biological parents under section 101(c)(1) of the Immigration and Nationality Act, 8 U.S.C. § 1101(c)(1) (2012), for purposes of citizenship if he or she was born in a country or State that has eliminated all legal distinctions between children based on the marital status of their parents or had a residence or domicile in such a country or State (including a State within the United States), if otherwise eligible. In *Matter of Cross*, 26 I&N Dec. 485 (BIA 2015), the Board held that the Jamaican Status of Children Act (JSCA) of 1976 eliminated all distinctions between children born in and out of wedlock. Thus, under *Cross*, a child born out of wedlock who was under 18 years of age on the effective date of the JSCA, or born on or after that date, qualified as the legitimated child of his or her father if the requirements for acknowledgment under Jamaican law were met before the child’s 18th birthday.

In the present matter the applicant, as in *Cross*, claims to have derived citizenship through his naturalized father under operation of section 320 of the Act. In *Cross*, the Board stated that legitimation may be established in Jamaica by the biological father’s acknowledgment of the child on the child’s birth certificate. *Id.* *See Matter of Pagan*, 22 I&N Dec. 547 (BIA 1999) The record demonstrates that the applicant’s father added his name to the applicant’s birth certificate, registered

on [REDACTED] thus acknowledging the applicant as his child in accordance with Jamaican law. As such, the applicant has established that he is the legitimated child of his father for purposes of section 101(c)(1) of the Act.<sup>1</sup> The record reflects that the applicant was two years old when his father became a naturalized U.S. citizen; that he was admitted into the United States as a lawful permanent resident in [REDACTED] when he was 15 years old; and that he subsequently lived in the legal and physical custody of his U.S. citizen father in the United States prior to turning 18. The applicant therefore satisfies the conditions set forth in section 320 of the Act. Accordingly, the applicant's appeal will be sustained.

*Conclusion*

The applicant bears the burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *See also* 8 C.F.R. § 320.3(b)(1) and *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Here, the applicant has met his burden of establishing that he is a U.S. citizen.

**ORDER:** The appeal is sustained.

---

<sup>1</sup> The applicant does not assert, and we shall not address, whether he was legitimated under the law in Florida, the place of his and his father's current residence, as we have determined that the applicant was legitimated under Jamaican law.