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: JUN 05 2015

FILE #:
APPLICATION RECEIPT #:

IN RE: Applicant:

APPLICATION: Application for Certificate of Citizenship under former section 301 of the Immigration and Nationality Act; 8 U.S.C. § 1401

ON BEHALF OF APPLICANT:

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,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Oakland Park, Florida denied the application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded to the Field Office Director for further proceedings consistent with this decision.

The applicant was born in Venezuela on The applicant's parents were married at the time of his birth. His father is not a U.S. citizen. His mother was born in Panama on and is a U.S. citizen pursuant to section 303(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1403(b). The applicant entered the United States as a non-immigrant in when he was 10 years old. His parents divorced on when he was 13 years old. The applicant adjusted his status to a lawful permanent resident on , at age 15. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship at birth through his mother or, in the alternative, that he derived U.S. citizenship based upon the naturalization of his mother.

The Field Office Director found that the applicant did not establish that his mother had the required physical presence in the United States prior to his birth in order for him to acquire U.S. citizenship pursuant to former section 301(g) of the Act, 8 U.S.C. § 1401(g). The Field Office Director further found the applicant not eligible to acquire U.S. citizenship under section 320 of the Act, 8 U.S.C. § 1431, as the applicant was over the age of eighteen on February 27, 2001. The Field Office Director denied the applicant's Form N-600, Application for Certificate of Citizenship, accordingly. *See Decision of the Field Office Director*, dated May 12, 2014.

On appeal, the applicant stated that the Field Office Director only applied section 301(g) of the Act (birth abroad to a U.S. citizen parent) and section 320 of the Act (Child Citizenship Act of 2000), and failed to apply former section 321(a) of the Act, contending that the applicant derived U.S. citizenship as the child of a naturalized parent. The applicant further contends that he acquired U.S. citizenship under section 301(g) of the Act as his mother satisfied the physical presence requirement as being physically present abroad as a dependent unmarried daughter and a member of the household of a person employed by the United States government.

The AAO reviews these proceedings *de novo*. *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 applicable law for transmitting citizenship to a child born abroad when one parent is a U.S. citizen is the statute that was in effect at the time of the child's birth. *See Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1028 n.3 (9th Cir. 2001) (internal citation omitted). The applicant in the present matter was born in Therefore, former section 301(g) of the Act, 8 U.S.C. § 1401(g), is applicable to his case.

Former section 301(g) of the Act stated that the following shall be nationals and citizens of the United States at birth:

> a person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years: *Provided*, That any periods of honorable service in the Armed Forces of the United States, or periods of employment with the United States Government or with an international organization as that term is defined in section 1 of the International Organizations Immunities Act (59 Stat. 669; 22 U.S.C. 288) by such citizen parent, or any periods during which such citizen parent is physically present abroad as the dependent unmarried son or daughter and a member of the household of a person (A) honorably serving with the Armed Forces of the United States, or (B) employed by the United States Government or an international organization as defined in section 1 of the International Organizations Immunities Act, may be included in order to satisfy the physical-presence requirement of this paragraph. This proviso shall be applicable to persons born on or after December 24, 1952, to the same extent as if it had become effective in its present form on that date.

Former section 301(a)(7) of the Act was re-designated as section 301(g) by the Act of October 10, 1978, Pub. L. No. 95-432, 92 Stat. 1046 (1978). The requirements of the statute remained the same after the 1978 re-designation. The Immigration and Nationality Act Amendments of November 14, 1986, Pub. L. No. 99-653, 100 Stat. 3655 (1986), enacted November 14, 1986, amended section 301(g), which now requires an applicant to establish that his or her U.S. citizen parent was physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, rather than for ten years as previously required. Current section 301(g) of the Act is inapplicable here because it applies only to individuals born on or after the 1986 enactment date. *See* Section 8(r) of the Immigration Technical Corrections Act of 1988, Pub. L. No. 100-525, 102 Stat. 2609 (1988).

Former section 301(g) of the Act requires that the applicant establish that his mother was physically present in the United States for at least ten years prior to his birth on , and that at least five of these years were after his mother's fourteenth birthday on .

There is no evidence in the record to establish that the applicant's mother had the required physical presence in the United States prior to his birth. The record indicates that the applicant's mother was born abroad, and first entered the United States in when the applicant was already ten years old.

As noted above, under section 301(g) of the Act, any periods during which the citizen parent is physically present abroad as the dependent unmarried son or daughter and a member of the household of a person employed by the United States Government or an international organization as defined in section 1 of the International Organizations Immunities Act, may be included in order to satisfy the physical-presence requirement.

On appeal, the applicant states that his maternal grandfather, his mother's father, was employed as an engineer at the Thus, if the applicant can establish that his maternal grandfather's employment was with the U.S. government or a qualified international organization, and that his mother was an unmarried dependent of her father and a member of his household for the requisite ten years, five of which were before she turned fourteen, during that employment, the applicant's mother would satisfy the physical presence requirement under section 301(g) of the Act.

However, there is no evidence in the record regarding the applicant's maternal grandfather's employment in subsequent to the applicant's mother's birth, nor is there any evidence regarding the time the applicant's mother spent in as a dependent of her father. A brief submitted by the counsel, dated July 3, 2014, indicates that the applicant "is in the process of adducing relevant information and evidence" in order to establish that his mother's physical presence abroad satisfies the physical presence requirement under section 301(g) of the Act. The regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that an affected party must file a complete appeal within 30 days after service of an unfavorable decision. The instructions for filing the Form I-290B, Notice of Appeal or Motion, state that the applicant may submit a brief and/or additional evidence at the time of initial filing of the Form I-290B or within 30 days of filing. As no additional evidence was received by the AAO within 30 days of filing the Form I-290B, the record is considered complete. We therefore concur with the decision of the Field Office Director that applicant did not acquire U.S. citizenship under section 301(g) of the Act, and that the Certificate of Citizenship was properly denied.

The Field Office Director noted the applicant is not eligible for a Certificate of Citizenship under section 320 of the Act, as he was born before February 27, 1983 and was over the age of eighteen on February 27, 2001. The applicant does not contest his ineligibility for acquired citizenship under section 320 of the Act.

On appeal, the applicant contends he derived U.S. citizenship as the child of a naturalized parent under former section 321(a) of the Act.

The applicable law for derivative citizenship purposes is that 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); *accord Jordon v. Attorney General*, 424 F.3d 320, 328 (3d Cir. 2005). Former section 321 of the Act 8 U.S.C. § 1432, in effect at the time of the applicant became a lawful permanent resident in , is applicable in this case.

Former section 321(a) of the Act provided, in pertinent part:

> A child born outside of the United States of alien parents . . . 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; and if
>
> (4) Such naturalization takes place while such child is unmarried and under the age of eighteen 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 naturalized under clause (2) or (3) of this subsection, or thereafter begins to reside permanently in the United States while under the age of eighteen years.

The applicant contends that his mother is a naturalized U.S. citizen because she acquired U.S. citizenship under section 303(b) of the Act, a collective naturalization provision of the Act. He further contends that he satisfied the requirements set forth in former section 321(a)(3) of the Act as his mother obtained legal custody of the applicant when his parents divorced in , and that he was fifteen years old at the time he adjusted to lawful permanent resident status, satisfying section 321(a)(5) of the Act. He therefore contends that he met all the conditions to derive U.S. citizenship under former section 321(a) of the Act.

The record establishes that the applicant's mother is a U.S. citizen. The record indicates that she was issued a U.S. passport at the U.S. Embassy in Panama on The record includes a copy of a letter dated August 10, 1998 from the Vice Counsel of the U.S. Embassy in Panama stating that the applicant's mother is a citizen of the United States pursuant to Section 303(b) of the Act.

Collective naturalization is defined as a group of people all receiving their citizenship through an act of congress or treaty. According to Black's Law Dictionary: "In the United States collective naturalization occurs when designated groups are made citizens by treaty (as Louisiana Purchase), or by a law of Congress (as in annexation of Texas and Hawaii)." *See Black's Law Dictionary*, Sixth Edition, p. 1026

On August 4, 1937, Congress passed an act declaring that children born to U.S. citizens on the Canal Zone on or after February 26, 1904 were U.S. citizens. If the child was born before August 4, 1937, U.S. citizenship vested on August 4, 1937. If the child was born after that date, citizenship vested at birth. *See INS Interp. Ltr. 303.1*, (2001 WL 1333855 (INS)). This Act was subsequently recodified as section 303(b) of the Act.

The applicant's mother was born in in , therefore her U.S. citizenship was vested at birth. Former section 321(a) of the Act provides for children born outside of the United States of alien

parents to derive U.S. citizenship; as the applicant's mother was a U.S. citizen at the time of his birth, he was not born of alien parents, thus is ineligible for derivative citizenship under that section of the Act.

We note that the applicant was placed into immigration proceedings on June 6, 2014. The record contains an Order of the Immigration Judge dated February 15, 2015 granting the respondent's motion for termination of the proceedings with prejudice, finding the respondent to be a U.S. citizen and not subject to removal proceedings.

However, USCIS is not bound by the immigration judge's finding regarding the applicant's U.S. citizenship status, as an immigration judge does not have jurisdiction or authority to declare that an alien is a U.S. citizen. Rather, the immigration judge's termination of removal proceedings against the applicant would be based on a determination that the U.S. Department of Homeland Security had failed to meet its burden of proving the applicant's alienage and deportability by clear, convincing and unequivocal evidence. *See Murphy v. INS,* 54 F.3d 605 (9th Cir. 1995) (holding that in deportation proceedings, the government must prove alienage by clear, unequivocal and convincing evidence.) *Minasyan v. Gonzalez,* 401 F.3d 1069 (9th Cir. 2005) clarifies further that an immigration judge does not have authority to declare that an alien is a citizen of the United States, and that such jurisdiction rests with the USCIS citizenship unit and with the federal courts.

We further note that the record contains a copy of the applicant's U.S. passport. In *Matter of Villanueva,* 19 I&N Dec. 101, 103 (BIA 1984), the Board held that a valid U.S. passport is conclusive proof of U.S. citizenship. Specifically, the Board held that:

> unless void on its face, a valid United States passport issued to an individual as a citizen of the United States is not subject to collateral attack in administrative immigration proceedings but constitutes conclusive proof of such person's United States citizenship.

Id. However, where, as here, the applicant has failed to establish statutory eligibility for U.S. citizenship, a Certificate of Citizenship cannot be issued. The U.S. Citizenship and Immigration Service's (USCIS) Adjudicator's Field Manual at § 71.1(e) instructs:

> An unexpired United States passport issued for 5 or 10 years is now considered prima facie evidence of U.S. citizenship. Because it does not provide the actual basis upon which citizenship was acquired or derived, the submission of additional documentation may be required or the passport file may be requested. If after review there are differences or discrepancies between the USCIS information and the Passport Office records which would indicate that the application should not be approved, no action should be taken until the Passport Office has an opportunity to review and decide whether to revoke the passport.

The matter will therefore be remanded to the field office director to request that the Passport Office review and decide whether to revoke the applicant's passport. The field office director shall issue a

new decision once the Passport Office's review is completed and, if adverse to the applicant, shall certify the decision to the AAO for review.

ORDER: The matter is remanded to the director for action consistent with this decision and for issuance of a new decision, which, if adverse to the applicant, shall be certified to the Administrative Appeals Office for review.