



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **JUN 18 2015**

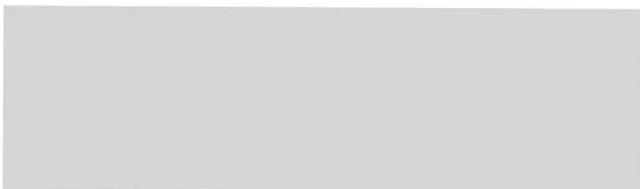
FILE #:

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for Certificate of Citizenship under Former Section 321 of the Immigration and Nationality Act; 8 U.S.C. § 1432 (repealed)

ON BEHALF OF APPLICANT:



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) 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 Field Office Director, Miami, Florida, denied the application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant was born in Jamaica on [REDACTED] to an unwed mother. Only the applicant's mother is listed on his birth certificate; no father is listed. The applicant's mother married an individual who is not the applicant's biological father on [REDACTED] 1970. The applicant was admitted to the United States as a lawful permanent resident on June 30, 1974, at the age of [REDACTED]. On August 19, 1975, at the age of [REDACTED] the applicant was legally adopted by his mother's spouse. The applicant's mother became a U.S. citizen through naturalization on July 12, 1979, when the applicant was [REDACTED] years old. The applicant's adoptive father became a naturalized U.S. citizen on August 23, 2013. The applicant seeks a certificate of citizenship, claiming that he derived U.S. citizenship through his mother under the second clause of former section 321(a)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432(a)(3).

The Field Office Director determined that the applicant failed to establish eligibility for derivative citizenship, as prior to the applicant's eighteenth birthday on [REDACTED], only one of his parents, his mother, had become a naturalized U.S. citizen. As such, the applicant failed to meet the requirement of the naturalization of both his parents under former section 321(a)(1) of the Act. The applicant's Form N-600, Application for Certificate of Citizenship was denied accordingly. See *Decision of the Director*, dated September 23, 2014.

On appeal, the applicant, through counsel, contends that although he failed to meet the requirement of having both parents naturalize under former section 321(a)(1) of the Act, he qualifies for derivative citizenship pursuant to the second clause of former section 321(a)(3) of the Act, as a child born out of wedlock whose paternity has not been established by legitimation.

The AAO conducts appellate review on a de novo basis. 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 "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)).

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). The Child Citizenship Act of 2000 (the CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), which took effect on February 27, 2001, amended sections 320 and 322 of the Act, and repealed section 321 of the Act. The provisions of the CCA are not retroactive, and the amended provisions of section 320 and 322 of the Act apply only to persons who were not yet 18 years old as of February 27, 2001. The applicant's eighteenth birthday was on [REDACTED]. Because the applicant was over the age of 18 on February 27, 2001, he is not eligible for the benefits of the

amended Act. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001).

Former section 321 of the Act, in effect at the time the applicant became 18 years of age in 1983, is therefore applicable in this case, and provided, in pertinent part, that:

(a) 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; and if-
- (4) Such naturalization takes place while said 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 (2) or (3) of this subsection, or thereafter begins to reside permanently in the United States while under the age of 18 years.

(b) Subsection (a) of this section shall apply to an adopted child only if the child is residing in the United States at the time of naturalization of such adoptive parent or parents, in the custody of his adoptive parent or parents, pursuant to a lawful admission for permanent residence.

The last date upon which the applicant was eligible for U.S. citizenship under this section of the law was the day prior to his eighteenth birthday, [REDACTED]. On that date, the applicant was the "child" of his biological mother and adoptive father. However, only the applicant's mother had naturalized prior to that date. The applicant's adoptive father, who adopted the applicant in 1975, did not become a naturalized U.S. citizen until August 23, 2013, when the applicant was 48 years old.

The term "child" means an unmarried person under 21 year of age and includes a child legitimated under the law of the child's residence or domicile if such legitimating or adoption takes place before the child reaches the age of 16 years, and the child in the legal custody of the legitimating or adopting parent or parents at the time of such legitimation or adoption. *Wedderburn v. INS*, 215 F.3d 795, 798 (7th Cir. 2000)(citing section 101(c)(1) of the Act).

According to the adoption decree submitted by the applicant, the applicant was legally adopted by his mother's spouse on August 19, 1975. Black's Law Dictionary defines the term "adoption" as:

The creation by judicial order of a parent-child relationship between two parties who usu. are unrelated; the relation of parent and child created by law between persons who are not in fact parent and child. • This relationship is brought about only after a determination that the child is an orphan or has been abandoned, or that the parents' parental rights have been terminated by court order. *Adoption creates a parent-child relationship between the adopted child and the adoptive parents with all the rights, privileges, and responsibilities that attach to that relationship, though there may be agreed exceptions.* [Emphasis added].

See, *Black's Law Dictionary* (10th ed. 2014)

Black's Law Dictionary further defines "adopted child" as a "child who has become the son or daughter of a parent or parents by virtue of legal or equitable adoption" *Id.*

By virtue of the Decree Approving Application and Agreement of Adoption by the Judge of the [REDACTED] State of Connecticut, on August 19, 1975, the applicant became the child of his adoptive father, with his adoptive father attaining all the rights, privileges, and responsibilities that attach to that relationship. The applicant was the child of two parents, his biological mother and his adoptive father, prior to turning 18 on [REDACTED]. As his adoptive father had not yet naturalized prior to his eighteenth birthday, the applicant is ineligible to derive citizenship under former section 321 of the Act.

On appeal, the applicant, through counsel, contends that as the applicant does not meet the requirements of former section 321(a)(1), U.S. Citizenship and Immigrations Services (USCIS) is required to look at former section 321(a)(2-3) to determine whether the applicant qualifies for derivative citizenship. However, the applicant, prior to his eighteenth birthday, was the child of two parents. In accordance with former section 321(a)(1) of the Act, the applicant could only derive citizenship if both parents naturalized before his eighteenth birthday. Sections 2 and 3 of former section 321(a) of the Act refer to situations when an applicant, prior to his or her eighteenth birthday, is the child of only one parent. Former section 321(a)(2) of the Act refers to an applicant with only one parent, due to the death of the other parent. The first clause of former section 321(a)(3) of the Act refers to an applicant with only one parent with legal custody, due to the legal separation of his or her parents. Finally, the second clause of former section 321(a)(3) of the Act refers to an applicant with only one parent, the child of a single mother whose paternity was not established by legitimation. As former sections 321(a)(2) and 321(a)(3) of the Act address situations in which the applicant is unable to qualify under former section 321(a)(1) of the Act because he or she is no longer the child of two parents, the applicant, the child of a mother and adoptive father, is ineligible for derivative citizenship under these subsections. The applicant is not eligible for derivative citizenship under former section 321 of the Act because both of his parents did not naturalize before his eighteenth birthday.

In *Barthelemy v. Ashcroft*, 329 F.3d 1062 (9th Cir. 2003), the U.S. Court of Appeals for the Ninth

Circuit provided useful guidance for interpreting the provisions of former section 321 of the Act. The Court stated:

Reading § 321(a) in its entirety, we think that Congress generally intended to provide automatic citizenship to children born abroad of alien parents only after the naturalization of *both* biological parents. This policy is rational for at least a few reasons, but we need only discuss one rationale here: the protection of parental rights. If United States citizenship were conferred to a child where one parent naturalized, but the other parent remained an alien, the alien's parental rights could be effectively extinguished. See *Fierro v. Reno*, 217 F.3d 1, 6 (1st Cir.2000) (noting that § 321(a) presumably demonstrates the congressional intent to protect children from "separation from the parent having legal custody during the child's minority"); *Wedderburn*, 215 F.3d at 800 ("Both the child and the surviving but non-custodial [alien] parent may have reasons to prefer the child's original citizenship, which may affect obligations such as military service and taxation."). Thus, § 321(a) prevents the naturalizing parent from usurping the parental rights of the alien parent.

Nonetheless, recognizing that this general rule of derivative citizenship might sweep too broadly, Congress carved out three additional avenues to citizenship in § 321 that apply where only one parent naturalizes. If the alien parent has deceased, or if the natural father has not legitimated his child, and the mother naturalizes, citizenship for the child is possible. INA § 321(a)(2)-(3), 8 U.S.C. § 1432(a)(2)-(3). Citizenship is also provided to "[a] child born outside the United States of alien parents ... upon ... [t]he naturalization of the parent having legal custody of the child when there has been a legal separation of the parents...." INA § 321(a)(3), 8 U.S.C. § 1432(a)(3).

Barthelemy at 1066.

We recognize that the decision refers to "naturalization of *both* biological parents" (emphasis in original), and in this particular case, the applicant's adoptive father is not his biological father. However, as noted above, upon the legal adoption of the applicant on August 19, 1975, the applicant became the child of his adoptive father, with his adoptive father attaining all the rights, privileges, and responsibilities that attach to that relationship. Thus, the same principle as articulated by the Ninth Circuit in *Barthelemy* applies to this case: former section 321(a) of the Act prevents the naturalizing parent, the applicant's mother, from usurping the parental rights of the alien parent, the applicant's adoptive father, such as preferences concerning the applicant's original citizenship.

We recognize that the applicant was born out of wedlock and the paternity of the applicant has not been established by legitimation, and that but for his adoption in 1975, he could be eligible to derive citizenship under the section clause of former section 321(a)(3) of the Act. Following his adoption, the applicant was only eligible for derivative citizenship under former section 321(a)(1), as the child of two parents. As only his mother became a naturalized U.S. citizen prior to the applicant's eighteenth birthday, the applicant is ineligible to derive U.S. citizenship under former section 321(a) of the Act as the child of two parents, only one of whom naturalized prior to the expiration of his eligibility.

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NON-PRECEDENT DECISION

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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 not been met.

ORDER: The appeal is dismissed.