



**U.S. Citizenship
and Immigration
Services**

(b)(6)



DATE: JUN 19 2015

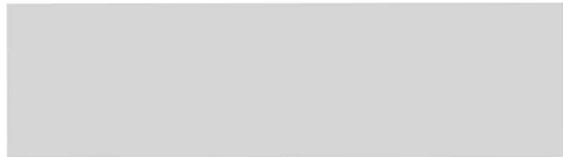
FILE #: [REDACTED]

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for Certificate of Citizenship under Former Section 321 of the Immigration and Nationality Act; 8 U.S.C. § 1432 (repealed)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



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

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. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant was born on [REDACTED] in Cuba. The applicant's parents were married at the time of the applicant's birth and both names are included on the applicant's birth certificate. The applicant was admitted to United States as a lawful permanent resident on March 31, 1962, at the age of [REDACTED]. The applicant entered the United States with his mother and a sibling. His mother became a U.S. citizen upon her naturalization on August 16, 1968, when the applicant was [REDACTED] years old. The applicant seeks a certificate of citizenship claiming that he automatically derived U.S. citizenship through his mother.

The Field Office Director determined that the applicant did not derive U.S. citizenship under former section 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432 (1989), because he failed to establish that he was in the legal custody of his naturalized parent who was legally separated from the other parent prior to his eighteenth birthday. The Form N-600, Application for Certificate of Citizenship, was accordingly denied. *See Decision of the Field Office Director*, dated September 8, 2014.

On appeal, the applicant, through counsel, maintains that his parents were divorced in [REDACTED] that his mother obtained custody of the applicant and his brother, and that he remained in the legal custody of his mother through her naturalization in 1968, and even after he was 18 years of age.

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 [REDACTED] 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.

The record indicates that the applicant obtained lawful permanent residency in 1962 at the time of his entry to the United States, and that his mother naturalized in 1968. The applicant has thus established that his U.S. citizen mother naturalized and that he was admitted to the United States as a lawful permanent resident prior to his eighteenth birthday. At issue in this case is whether the applicant's mother had legal custody of the applicant following his parent's divorce and prior to his eighteenth birthday.

In derivative citizenship cases where the parents have legally separated but there is no formal, judicial custody order, the parent having "actual, uncontested custody" will be regarded as having "legal custody" of the child. *Bagot v. Ashcroft*, 398 F.3d 252, 266-67 (3d Cir. 2005) (citing *Matter of M-*, 3 I&N Dec. 850, 856 (Cent. Office 1950)).

The record supports the applicant's claim that he was in his mother "actual, uncontested custody" prior to his eighteenth birthday. The applicant submits an affidavit which states that his parents were divorced in Cuba in [REDACTED] and that his mother obtained legal custody of the applicant and his brother. The applicant maintains that he has had little contact with his father since the divorce, indicates that his mother does not have a copy of her divorce certificate and that he is unable to obtain a copy of that record from Cuba. The evidence establishes that the applicant immigrated to the United States on March 31, 1962, the same date as his mother and brother.

The evidence further establishes that the applicant resided with his mother after entering the United States. The evidence includes report cards from [REDACTED]

Florida for the school years 1964-65 (Grade 2), 1967-68 (Grade 5), 1968-69 (Grade 6), and 1969-1970 (Grade 7). Each of the report cards was signed by the applicant's mother. There is also an academic report for the applicant at [REDACTED] for the 1974-1975 school year, which was sent to the applicant in care of his mother at his mother's address. In addition, the record includes a document from the [REDACTED] Florida, indicating that the applicant was discharged from the hospital on October 2, 1966, and that the applicant resided with his mother. The record also includes a letter from the District Director of the [REDACTED] Immigration and Naturalization Service, dated June 26, 1969, written to the applicant's mother in response to a request for a copy of the applicant's original birth certificate.

USCIS records indicate that the applicant's father entered the United States on January 22, 1963, separate from the date that the applicant, his mother, and his brother entered the United States. The applicant states that his father resettled in New York and the record includes a copy of the marriage registration for the applicant's father in [REDACTED] New York, dated May 23, 1966. This marriage certificate substantiates the applicant's claim that his father was living separately from the applicant and his mother, who were residing in Florida in 1966. In addition, the marriage certificate indicates that the applicant's parents were divorced, as the applicant's father would have had to demonstrate that he was legally separated from the applicant's mother prior to marrying his second spouse in 1966.

The applicant bears the burden of proof to establish the claimed citizenship by a preponderance of the evidence. Section 341 of the Act, 8 U.S.C. § 1452; 8 C.F.R. § 341.2(c). The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). In evaluating the evidence, *Matter of E-M-* also stated that "[t]ruth is to be determined not by the quantity of evidence alone but by its quality." *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, U.S. Citizenship and Immigration Services (USCIS) must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

In this particular case, a preponderance of the evidence indicates that the applicant's parents were legally separated in [REDACTED] in Cuba, and that the applicant was in the legal and physical custody of his mother until the applicant's mother became a naturalized U.S. citizen in 1968. Accordingly, the applicant has established that he qualifies to derive citizenship under former section 321(a) of the Act.

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 been met.

ORDER: The appeal is sustained.