



U.S. Citizenship  
and Immigration  
Services

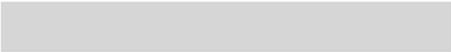
(b)(6)



DATE: **MAR 25 2015**

OFFICE: NEW YORK

FILE: 

IN RE: 

APPLICATION: Application for Certificate of Citizenship under former section 321 of the Immigration and Nationality Act, 8 U.S.C. § 1432 (1965)

ON BEHALF OF APPLICANT:



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 nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO**

Thank you,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The District Director, New York, New York denied the application for a certificate of citizenship and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born in the Dominican Republic on [REDACTED]. The applicant's parents, [REDACTED] and [REDACTED] were divorced on [REDACTED]. Upon divorce, the applicant's mother was granted legal custody of the applicant. On August 31, 1990, the applicant's parents appeared before a notary to transfer custody of the applicant to his father. The applicant was admitted to the United States as a lawful permanent resident on June 20, 1991. The applicant's father became a U.S. citizen upon his naturalization on June 7, 1989. The applicant's eighteenth birthday was on [REDACTED]. The applicant seeks a Certificate of Citizenship under former section 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432, claiming that he derived citizenship through his father.

The District Director determined that the applicant failed to establish eligibility for derivative citizenship because he was not in his father's legal custody following his parents' divorce, as the notarial document dated August 31, 1990, was not valid to transfer custody. The District Director stated that the notarial document was a private document rather than a court order or legal amendment of the court custody order of [REDACTED]. The application was denied accordingly.

On appeal, counsel contends that though the applicant was initially in his mother's legal custody upon their divorce, the applicant was in the legal custody of his father as of August 31, 1990. Counsel asserts that under Dominican law and according to a Dominican court, the notarial document drawn up by the applicant's parents is a valid legal document that effectively transferred legal custody of the applicant to his father.

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 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). Former section 321 of the Act was the law in effect prior to the applicant's eighteenth birthday, and is therefore 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 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 eighteen years.

In the present case, the record establishes that the applicant's parents were divorced in [REDACTED] the applicant's mother is not a U.S. citizen, the applicant's father was naturalized prior to the applicant's 18th birthday, the applicant was unmarried and was residing in the United States pursuant to a lawful admission for permanent residence at the time of the naturalization of his father. The applicant therefore meets the requirements of sections (4) and (5). The record does not establish that his father had legal custody of the applicant as required by section (3)

The applicant's parents divorced on [REDACTED] and custody and care of the applicant was given to his mother under the court's divorce decree. The applicant submitted a notarial document from August 31, 1990, indicating that the applicant's parents documented and certified the discharge of the applicant's mother from court sentences and transferred such duties to the applicant's father. Specifically, the notarial document indicates that the applicant's mother agrees and accepts the cessation of the sentence from May 5, 1988 and the sentence of May 14, 1990 following the appeal. The record contains a divorce decree granting the applicant's mother care and custody of the applicant on May 14, 1984. However, the record does not contain any court documents from May 5, 1988 or May 14, 1990. Accordingly, the record does not contain the court documents upon which the notarial document relies in discharging the applicant's mother from her court ordered duties. Without these documents we are unable to determine the full meaning of the notarial document.

Further, on June 29, 2012, a court in the Dominican Republic issued an order stating that the applicant's mother requested authorization of the August 31, 1990 notarial document. The court rejected the request, stating that notaries are public officials instituted to receive acts that parties should or want to give a character of authenticity inherent to acts of public authority. Counsel for the applicant asserts that in accordance with Article 1 of Law 301, as cited by the court, custody was transferred to the applicant's father through the notarial document. Counsel further asserts that Article 1134 of the Dominican Civil Code provides that the contract is the law of the parties.

However, under Dominican law, a divorce by mutual consent, such as the divorce between the applicant's parents, includes the creation of an authentic act with stipulations of both spouses, a notarial document. Amongst the stipulated items, this authentic act must contain an agreement concerning the care of children born of the union, both during proceedings and after the divorce grant. This document must then be submitted before a judge, both parties must either appear in person or through representatives, and the court will issue a final divorce order. Chapter IV, Articles 28, 32 of Law 1306-bis (1937) as amended by Law 142 (1971), Civil Code of the Dominican Republic. Accordingly, a divorce by mutual consent and determination of custody, despite the provisions of Article 1 of Law 301 and Article 1134 of the Dominican Civil Code, views the creation of an authentic act as a step toward finalizing the parties' intent. As Dominican law requires notarized child custody agreements in divorce proceedings to be brought before a court, it is not clear that the modification of a custody order can be accomplished by a notary alone.

Based on the above, the applicant has not established that he was in the legal custody of his father as required by former section 321(a)(3) of the Act.

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). Here, the applicant has failed to establish by a preponderance of the evidence that he met all of the conditions for the automatic derivation of U.S. citizenship pursuant to former section 321 of the Act before his eighteenth birthday. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.