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

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF R-A-K-

DATE: NOV. 4, 2015

MOTION OF ADMINISTRATIVE APPEALS OFFICE DECISION

APPLICATION: FORM N-600, APPLICATION FOR CERTIFICATE OF CITIZENSHIP

The Applicant, a native and citizen of Jamaica, seeks a Certificate of Citizenship. *See* Immigration and Nationality Act (the Act) § 320, 8 U.S.C. § 1431. The Field Office Director, Philadelphia, Pennsylvania, denied the application. We dismissed an appeal of the Director's decision. The matter is now before us on a motion to reopen and a motion to reconsider. The motions will be denied.

The record reflects that the Applicant was born in Jamaica on [REDACTED], to unmarried, non-U.S. citizen parents. The Applicant entered the United States as a lawful permanent resident on October 8, 1993, at the age of [REDACTED]. The Applicant's father became a naturalized U.S. citizen on June 14, 2000, when the Applicant was [REDACTED] years of age. The Applicant seeks a certificate of citizenship indicating that he derived U.S. citizenship from his father pursuant to section 320 of the Act, 8 U.S.C. § 1431.

On July 14, 2010, the Director determined that the Applicant did not establish that he was legitimated by his father prior to his 18th birthday, as required by section 320(a)(3) of the Act, 8 U.S.C. § 1431(a)(3). The Form N-600, Application for Certificate of Citizenship, was denied accordingly. In a May 10, 2012, decision on appeal, we concurred with the Director that the Applicant did not establish that he was legitimated under Jamaican law as his parents were never married, and further determined that, even if he was legitimated, he did not establish that he was in his father's legal custody at the time of his legitimation, as required under section 101(c)(1) of the Act, 8 U.S.C. § 1101(c)(1).

On motion, which was filed on June 7, 2012, and received by us on April 2, 2015, the Applicant contends that he was legitimated and in his father's legal and physical custody during his early formative years, and therefore he qualifies for derivative citizenship under section 320 of the Act.

We conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the motion.

Because the Applicant was born abroad, he is presumed to be a foreign national 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

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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). Section 320 of the Act, 8 U.S.C. § 1431, as amended by the Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631 (CCA), applies to this matter because the Applicant was not yet 18 years old as of the February 27, 2001, effective date of the CCA. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153, 156 (BIA 2001) (en banc).

Section 320(a) of the Act provides:

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 record indicates that the Applicant was born on [REDACTED], in Jamaica. The parents of the Applicant were never married. The birth certificate for the Applicant was registered on [REDACTED] days after his birth, and at that time, the birth certificate only listed the Applicant's mother. The birth certificate further indicates that on May 12, 1988, the certificate was amended to include the name of the Applicant's father, and the age at the time of birth, the occupation, and the birthplace of the Applicant's father.

The Director determined that the Applicant did not qualify as his father's child under section 101(c) of the Act because he was born out of wedlock and not legitimated, and cited *Matter of Hines*, 24 I&N Dec. 544 (BIA 2008), in which the Board of Immigration Appeals (the Board) held that the

sole means of legitimating a child born out of wedlock in Jamaica is through the subsequent marriage of the child's biological parents. We concurred with the Director's decision in dismissing the appeal on May 10, 2012.

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 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 *Cross*, the Board further 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 reflects that the Applicant was born after the effective date of the JSCA, and the name of the Applicant's father was added to the Applicant's birth certificate on May 12, 1988. Therefore, we find that on May 12, 1988, the Applicant's father acknowledged the Applicant as his child, and consequently legitimated him on that date, in accordance with Jamaican law.

However, as we noted in our decision of May 10, 2012, even if the Applicant demonstrated his legitimation, the present record does not establish his eligibility for citizenship, as Section 101(c)(1) of the Act requires that the child be in the legal custody of the legitimating parent at the time of legitimation. Legal custody of a biological child born out of wedlock will be presumed where a U.S. citizen parent has legitimated and resides with the child. 8 C.F.R. § 320.1 (definition of *legal custody*). Apart from that presumption and in the absence of a judicial determination or a judicial or statutory grant of custody, "the parent having actual uncontested custody is to be regarded as having 'legal custody' of the person concerned for the purpose of determining that person's status[.] . . ." *Matter of M-*, 3 I&N Dec. 850, 856 (BIA 1950). Here, the record indicates that the Applicant's father was not residing with the Applicant and did not have actual custody of him at the time his birth certificate was amended in 1988. In his July 26, 2010, affidavit submitted on appeal, the Applicant's father states that the Applicant resided with him upon his arrival in the United States in 1993, but he does not indicate that they resided together prior to that time. In his May 30, 2012, affidavit, the Applicant's father states that he travelled to the United States in 1986, and returned to Jamaica in 1991. Thus, the record indicates that the Applicant was not in his father's custody at the time his father's name was added to the birth certificate in 1988. Furthermore, the record also contains a 2007 Presentence Investigation Report submitted in the Applicant's criminal court proceedings which reflects that the Applicant told his probation officer that he was raised by his mother and grandmother in Jamaica until 1993. Affidavits submitted by the Applicant's mother and the Applicant's half-sister also do not verify that the Applicant was in the legal custody of his father at the time his father's name was added to his birth certificate. Accordingly, the present record does not demonstrate that the Applicant was in his father's legal custody at the time of his legitimation in

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1988. Consequently, the Applicant does not meet the definition of a child at section 101(c)(1) 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 not been met.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of R-A-K-*, ID# 13751 (AAO Nov. 4, 2015)