

(b)(6)



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

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

MATTER OF B-B-B-

DATE: NOV. 12, 2015

APPEAL OF BUFFALO FIELD OFFICE DECISION

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

The Applicant, a native of Jamaica, seeks a Certificate of Citizenship. *See* Immigration and Nationality Act (the Act) § 321, 8 U.S.C. § 1432 (Repealed by Sec. 103(a), title I, Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631 (2000)). The Field Office Director, Buffalo, New York denied the application. The matter is now before us on appeal. The appeal will be dismissed.

The Applicant was born in Jamaica on [REDACTED], 1980. The Applicant was born out of wedlock to two Jamaican parents. The Applicant's birth certificate indicates that his father's name was added to his birth certificate on September 13, 1989. The Applicant was admitted to the United States as a lawful permanent resident on April 22, 1995, at the age of [REDACTED], based on the approval of a Form I-130, Petition for Alien Relative, filed by his father. The Applicant's father became a U.S. citizen through naturalization on April 20, 1996, when the Applicant was [REDACTED] years old. The Applicant's parents were never married, his mother was never admitted to the United States as a lawful permanent resident, nor was she ever a citizen of the United States. The Applicant seeks a certificate of citizenship indicating that he derived U.S. citizenship through his father under former section 321(a) of the Act.

On June 29, 2015, the Director determined that the Applicant did not establish eligibility for derivative citizenship as his parents were never married and his mother is not a U.S. citizen. The applicant's Form N-600, Application for Certificate of Citizenship, was denied accordingly.

On appeal, the Applicant contends that he qualifies for derivative citizenship because he meets the requirements set forth under section 321(a)(5) of the Act, as he was residing with his father in the United States pursuant to a lawful admission for permanent residence at the time his father was naturalized.

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 appeal.

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

*Matter of B-B-B-*

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 (BIA 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 18th birthday was on September 14, 1998. 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 [redacted] 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 Applicant contends that he qualifies for U.S. citizenship as he was under the age of [redacted] when his father became a naturalized U.S. citizen, as required under former section 321(a)(4) of the Act, and that he was residing in the United States pursuant to a lawful admission for permanent residence at the time his father was naturalized, as required under former section 321(a)(5) of the Act. Here, we find that the Applicant satisfied these two requirements for derivative citizenship before his eighteenth birthday. Specifically, the Applicant was admitted to the United States as a lawful permanent resident when he was [redacted] years old, and his father became a naturalized U.S. citizen when

(b)(6)

*Matter of B-B-B-*

he was [REDACTED] years old. Thus, he satisfies the requirement in former sections 321(a)(4) and 321(a)(5) of the Act.

To derive U.S. citizenship, though, the Applicant must also satisfy the requirements in former section 321(a)(1), 321(a)(2), or 321(a)(3) of the Act. As the Applicant's mother is not a U.S. citizen, the Applicant did not derive U.S. citizenship under former section 321(a)(1) of the Act, which requires the naturalization of both parents. The record also indicates that the Applicant's mother is still living, and he is consequently ineligible to derive U.S. citizenship from his father alone under former section 321(a)(2) of the Act.

The Applicant contends that there is no requirement that the parents of an applicant under former section 321 of the Act be married, and states that the only parental requirement is that the parent having legal custody of the child naturalize before the child's 18th birthday. However, the Applicant is ineligible to derive citizenship through his father under the first clause of former section 321(a)(3) of the Act because this subsection of the statute requires his parents' marriage, the record indicates his parents were never married, and therefore never "legally separated." The term "legal separation," as used in section 321(a)(3) of the former Act, means either a limited or absolute divorce obtained through judicial proceedings. *Nehme v. INS*, 252 F.3d 415, 425-26 (5th Cir. 2001); *Matter of H*, 3 I&N Dec. 742, 743-44 (BIA 1949). If an applicant's parents were never married to each other, they could not have obtained a legal separation. *Matter of H*, 3 I&N Dec. at 744. See *Lewis v. Gonzales*, 481 F.3d 125, 130 (2d Cir. 2007) (listing cases and noting that "every other court confronted with the question has held that the first clause of § [321](a)(3) requires a legal separation even if the child's parents never married"). See also *Lewis v. Gonzales*, 481 F.3d 125, 130 (2d Cir. 2007); *Barthelemy v. Ashcroft*, 329 F.3d 1062 (9th Cir. 2003) (holding that the child of a U.S. citizen father could not derive U.S. citizenship when the child's parents were never married and therefore never legally separated). Furthermore, the second clause of former section 321(a)(3) of the Act provides only for derivation of U.S. citizenship through the mother in the case of an out of wedlock child, but the record indicates that the Applicant's mother is not a U.S. citizen. As such, pursuant to former section 321(a)(3) of the Act, an applicant can derive citizenship through the naturalization of a parent having legal custody of a child only if there has been a legal separation of the parents. In this particular matter, the parents of the Applicant were never married, and therefore there was never a legal separation of his parents. Therefore, in addition to ineligibility under former sections 321(a)(1) and (a)(2) of the Act, the record reflects the Applicant also cannot derive U.S. citizenship under former section 321(a)(3) of the Act.

We note that the enactment of the Jamaican Status of Children Act (JSCA) of 1976 abolished the concept of illegitimacy in Jamaica, and that the Applicant was therefore legitimated, as legitimate children are treated exactly the same legally as illegitimate children, and the record further indicates that the Applicant was legitimated by his father, as the Applicant's father took the affirmative action of having his name entered onto the Applicant's birth certificate in 1989. However, the legitimacy of the Applicant is not at issue in this case. While the legitimacy of the Applicant would be relevant under current section 320 of the Act (see generally *Matter of Cross*, 26 I&N Dec. 485 (BIA 2015)),

*Matter of B-B-B-*

the Applicant was over the age of 18 on February 27, 2001, and not eligible for the benefits of the Child Citizenship Act of 2000. As such, former section 321 of the Act is controlling in this matter.

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.

Cite as *Matter of B-B-B-*, ID# 15991 (AAO Nov. 12, 2015)