



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

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

MATTER OF A-C-

DATE: OCT. 8, 2015

APPEAL OF LAS VEGAS FIELD OFFICE DECISION

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

The Applicant, a native and citizen of Romania, seeks to receive a certificate of citizenship. *See* Immigration and Nationality Act (the Act) former § 321, 8 U.S.C. § 1432. The Director, Las Vegas Field Office, denied the application. The matter is now before us appeal. The appeal will be sustained.

The Applicant was born on [REDACTED] in Romania. Her mother and father were natives and citizens of Romania. Both of the Applicant's parents became U.S. citizens through naturalization on May 13, 1991, before she turned 18 on [REDACTED]. The Applicant became a lawful permanent resident as of the date of her July 7, 1981 admission to the United States as a refugee. She seeks a certificate of citizenship, claiming to have derived U.S. citizenship through her parents. The director determined that the applicant had not established derivative citizenship under former section 321(a) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432, and issued a Request for Evidence (RFE) on November 1, 2013. The director denied the application for abandonment when the Applicant failed to provide copies of documents including, but not limited to, her birth certificate (or DNA evidence showing a biological relationship with her alleged mother) and two passport photographs. We note that, on appeal, the Applicant originally claimed to be unable to provide these documents due to confiscation of her birth certificate when she left the country as a refugee and her federal detention at the time of the appeal. The record reflects, however, that she supplemented her appeal by providing the requested photographs and DNA test results.

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); *accord Jordon v. Attorney General*, 424 F.3d 320, 328 (3d Cir. 2005). Former section 321 of the Act, in effect at the time the Applicant's parent's naturalized, is applicable in this case. Former section 321(a) provided that:

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 [emphasis added]; and if-
- (4) Such naturalization takes place while such 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 (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 18 years.

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

In denying the application, the director noted the type of evidence needed to establish eligibility under former section 321 of the Act and explained that absence of her birth certificate or secondary evidence of her parentage rendered the application incomplete. On appeal, the Applicant addresses the shortcomings noted in the denial decision. Further, DNA test results establish a greater than 99.99% probability of maternity by her claimed mother. The record reflects that the Applicant has met the statutory requirements to derive citizenship automatically under former section 321 of the Act on May 13, 1991, the date of her parents' naturalization, as she had resided here in their custody as a lawful permanent resident since her refugee admission 10 years earlier and not yet reached her eighteenth birthday.

The burden of proof rests on the claimant to establish the claimed citizenship by a preponderance of the evidence. *See* 8 C.F.R. § 341.2(c). Here, the Applicant has met this burden.

ORDER: The appeal is sustained.

Cite as *Matter of A-C-*, ID# 12963 (AAO Oct. 8, 2015)