(b)(6)

U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF L-O-H-

DATE: APR. 28, 2016

APPEAL OF PHILADELPHIA, PENNSYLVANIA FIELD OFFICE DECISION

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

The Applicant, a native of Guyana, 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 *See* Immigration and Nationality Act (the Act) § 321, 8 U.S.C. § 1432 (Repealed by Sec. 103(a), title I, Child Citizenship Act of 2000, Pub.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)). An individual born outside the United States who acquired U.S. citizenship at birth, or who automatically derived U.S. citizenship after birth but before the age of 18, may apply to receive a Certificate of Citizenship. For individuals born to foreign national parents, only one of whom naturalized before the individual turned 18, the individual may become a U.S. citizen if one of three conditions are met: that individual's non-naturalized parent is deceased; the U.S. citizen parent has custody over the individual after a legal separation or divorce; or, if the individual was born to unmarried parents and is claiming to be a U.S. citizen through a naturalized mother, the father must not have made the individual his legitimate child.

The Field Office Director, Philadelphia, Pennsylvania Field Office, denied the application. The Director concluded the Applicant's parents were married, and only one of his parents became a naturalized U.S. citizen prior to his 18th birthday, and therefore the Applicant did not qualify for derivative citizenship under former section 321 of the Act.

We previously rejected the appeal of the Director's decision as being untimely filed. We hereby withdraw our decision and reopen the matter *sua sponte.* We will dismiss the appeal.

I. LAW

The Applicant seeks a certificate of citizenship indicating that he derived U.S. citizenship from the Applicant's U.S. citizen father. The Applicant was born in Guyana on , to unmarried foreign national parents. The Applicant's parents subsequently married on 1988. The Applicant was admitted to the United States as a lawful permanent resident on August 23, 1989. The Applicant's father became a citizen through naturalization on October 25, 1985. There is no evidence that the Applicant's mother is a U.S. citizen.

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 individuals who were not yet 18 years old as of February 27, 2001. 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). Therefore, the Applicant's citizenship claim must be considered under the provisions of former section 321 of the Act.

Former section 321 of the Act 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 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.

II. ANALYSIS

The record reflects that the Applicant's father became a naturalized U.S. citizen on October 25, 1985, prior to the Applicant's 18th birthday, and the Applicant was admitted to the United States as a lawful permanent resident on August 23, 1989. Therefore, the Applicant has potentially satisfied the fourth and fifth requirements of former section 321 of the Act for issuance of a certificate of citizenship.

At issue is whether the Applicant has shown that both his parents, who were married in 1988, became naturalized U.S. citizens prior to the time the Applicant turned 18 years of age, as required under former section 321(a)(1) of the Act, or whether the Applicant's parents were legally separated and his father had legal custody over him prior to his 18th birthday, as required by former section

321(a)(3) of the Act. We find that the Applicant did not meet these requirements for derivative citizenship.

The Applicant was born on [redacted], in Guyana. As stated above, to derive U.S. citizenship after birth, an individual who was born between December 24, 1952, and February 27, 1983, must satisfy certain conditions before reaching the age of 18. Specifically, the individual must be residing in the United States as a lawful permanent resident and must generally have two parents who naturalized. An individual born during this time period, and residing in the United States as a lawful permanent resident, may establish derivative U.S. citizenship through one naturalized parent if the individual's other parent is deceased, or through one naturalized parent who has legal custody of the individual if the individual's parents are legally separated. Finally, an individual born out of wedlock during the above time period may derive U.S. citizenship from a naturalized mother if the individual's paternity has not been established by legitimation and the individual is residing in the United States as a lawful permanent resident.

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 requires that the record demonstrate that the Applicant's claim is "probably true," based on the specific facts of his 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 Applicant may establish derivative citizenship through his U.S. citizen father if his parents were legally separated, he resided in the father's legal custody pursuant to lawful admission for permanent residence, and all of these requirements, including the father's naturalization, were satisfied prior to the Applicant's 18th birthday on [redacted].

The Applicant has established that he meets several requirements for derivative citizenship under former section 321 of the Act. Specifically, the Applicant's father became a naturalized U.S. citizen on October 25, 1985, prior to the Applicant's 18th birthday, as required by former section 321(a)(4) of the Act, and the Applicant was admitted to the United States as a lawful permanent resident on August 23, 1989, prior to his 18th birthday, as required by former section 321(a)(5) of the Act.

At issue is whether the Applicant has shown that either both his parents became naturalized U.S. citizens prior to his 18th birthday, as required by former section 321(a)(1) of the Act, or that his parents were legally separated and his father had legal custody over him prior to his 18th birthday, as required by former section 321(a)(3) of the Act.

There is no evidence it the record that the Applicant's mother has become a naturalized U.S. citizen, and therefore the Applicant is did not meet the eligibility requirements to derive U.S. citizenship pursuant to former section 321(a)(1) of the Act.

In a statement included with the Applicant's Form I-290B, Notice of Appeal or Motion, the Applicant states that the Director failed to consider that his biological father and mother were separated.

The term, "legal separation" means "either a limited or absolute divorce obtained through judicial proceedings." *See Matter of H*, 3 I&N Dec. 742, 744 (BIA 1949). In this particular case, the Applicant did not provide any evidence to indicate that his parents were legally separated. Without documentation to support the Applicant's assertions on his parents' separation, or evidence indicating that the Applicant's U.S. citizen parent had legal custody subsequent to such a separation, we cannot find that the Applicant has met his burden of proof for eligibility under former section 321(a)(3) of the Act.

III. CONCLUSION

In view of the above, the Applicant has not demonstrated that parents were legally separated and his father had legal custody over him prior to his 18th birthday. Accordingly, the Applicant has not established eligibility for derivative citizenship pursuant to former section 321 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). The Applicant has not met that burden. Accordingly, although we reopened the matter *sua sponte*, we dismiss the underlying appeal.

ORDER: The appeal is dismissed.

Cite as *Matter of L-O-H-*, ID# 16109 (AAO Apr. 28, 2016)