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

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

MATTER OF K-F-J-

DATE: FEB. 12, 2016

MOTION ON 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 *See* Immigration and Nationality Act (the Act) § 321, 8 U.S.C. § 1432 (Repealed by Sec. 103(a), title I, Child Citizenship Act of 2000, Pub.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 Director, Miami Field Office, denied the application. We dismissed the Applicant's appeal. The matter is now before us on a motion to reconsider. The motion will be denied.

The record reflects that the Applicant was born in Jamaica on [REDACTED], to an unwed mother. On [REDACTED] 1970, the Applicant's mother married an individual who is not the Applicant's biological father. The Applicant was admitted to the United States as a permanent resident on June 30, 1974. On [REDACTED] 1975, the Applicant was legally adopted by his mother's spouse. The Applicant's mother became a U.S. citizen through naturalization on July 12, 1979. The Applicant's adoptive father became a naturalized U.S. citizen on August 23, 2013. The Applicant seeks a Certificate of Citizenship claiming that he derived U.S. citizenship from his U.S. citizen mother pursuant to former section 321 of the Act.

On September 23, 2014, the Director denied the application finding that the Applicant did not derive citizenship under former section 321(a)(1) of the Act, 8 U.S.C. § 1432(a)(1), because only one of his parents naturalized prior to his 18th birthday on [REDACTED]. On appeal, the Applicant asserted that he satisfied the requirements for derivative citizenship under former section 321(a)(3) of the Act as a child born out of wedlock whose paternity had not been established by legitimation. We dismissed the Applicant's appeal on June 18, 2015, finding that because he was legally adopted, he could only derive citizenship upon naturalization of both parents pursuant to former section 321(a)(1) of the Act.

The Applicant now seeks reconsideration of our decision dismissing his appeal. On motion, he states that we misinterpreted the precedent case law and incorrectly applied the provisions of former section 321(a)(1) of the Act to the facts of his case. The Applicant contends that his citizenship claim should be considered under the strict statutory construction of section 321(a)(3) of the Act. The Applicant maintains that he satisfies the statutory provisions of the section 321(a)(3) of the Act in that: (1) He was born out of wedlock; (2) His paternity was not established by legitimation; (3) His mother naturalized while he was under the age of 18, and; (4) He was residing in in the United States as a permanent resident at the time of his mother's naturalization. The Applicant submits a

brief, in which he references published decisions of the Board of Immigration Appeals (the Board) pertaining to the issue of legitimation in Jamaica, and a number of our unpublished decisions discussing eligibility for derivative citizenship under each of the provisions of former section 321 of the Act.

We conduct appellate review on a *de novo* basis. 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 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 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-

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(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 Applicant was born in Jamaica in [REDACTED] to an unwed mother. The name of the Applicant's biological father is not listed on his birth certificate. The record does not indicate that the Applicant's natural parents were ever married. The Applicant maintains, on motion, that he derived U.S. citizenship from his mother pursuant to former section 321(a)(3) of the Act because he was born out of wedlock and his paternity had not been established by legitimation. In support of this claim, the Applicant references the Board's precedent decision in *Matter of Hines*, 24 I&N Dec. 544 (BIA 2008), holding that the sole means of legitimation of a child born out of wedlock in Jamaica is the marriage of the child's parents. He claims that because his biological parents never married, his paternity was not established by legitimation. He avers that he, therefore, satisfies the requirements of former section 321(a)(3) of the Act for derivative citizenship through his U.S. citizen mother as a child born out of wedlock whose paternity was not established by legitimation.

We have addressed this argument in our decision on appeal recognizing that the Applicant was born out of wedlock and that his paternity was not established by legitimation under the laws of Jamaica. However, as we have explained in the decision, former section 321(a)(3) does not apply to the Applicant because at the time his mother naturalized on July 12, 1979, he was a legitimate child of two parents: his natural mother and his adoptive father. Accordingly, he could only derive citizenship under former section 321(a)(1) of the Act, which required naturalization of both parents.

The Applicant claims that our conclusion that he was a child of two parents at the time his mother naturalized has no support in the law, but offers no evidence to show that this determination was incorrect. The record reflects that the Applicant was legally adopted by his mother's spouse in the State of Connecticut on [REDACTED] 1975. As we have explained in our prior decision, the adoption resulted in the Applicant being considered a natural child of his adoptive father under the law of Connecticut. Former section 45-64a (currently 45a-731) of General Statutes of Connecticut, as in effect in 1975, provided in pertinent part:

**A final decree of adoption whether issued by a court of this state or a court of any other jurisdiction shall have the following effect in this state: (1) To create the relationship of parent and child between an adopting parent and the adopted person, as if the adopted person were the natural child of such adopting parent, for all purposes including inheritance and applicability of statutes, documents and instruments, whether executed before or after adoption decree**

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**is issued, which do not expressly exclude an adopted person in their operation or effect;**

(2) To relieve the natural parent or parents of the adopted person of all parental rights and responsibilities;

(3) To terminate all legal relationships between the adopted person and his natural parent or parents and the relatives of such natural parent or parents....(emphasis added).

(emphasis added). Therefore, under the laws of Connecticut, where the Applicant was adopted, as of [REDACTED] 1975, the Applicant was considered a natural child of his biological mother and his adoptive father. Further, the adoption legally terminated the Applicant's relationship with his biological father.

In addition, former section 45-274 (currently 45a-438) of the General Statutes of Connecticut, as in effect in 1975, provided in pertinent part:

....Children born before marriage whose parents afterwards intermarry shall be deemed legitimate and inherit equally with other children.

Here, the Applicant's parents, his biological mother and his adoptive father, were married at the time of his adoption. He was, therefore, a legitimate child of his natural parents as of [REDACTED] 1975.

As stated above, 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, supra*. The final critical event giving rise to the Applicant's eligibility for derivative citizenship was the naturalization of his mother on July 12, 1979. At the time this final critical event occurred, the Applicant was under the age of 18 as required under former section 321(a)(4) of the Act. He had also satisfied the requirement of former section 321(a)(5) of the Act, in that he was residing in the United States pursuant to lawful admission for permanent residence on June 30, 1974. However, as explained above, and contrary to the Applicant's contention, he was a natural, legitimate child of two married parents when his mother naturalized on July 12, 1979. The fact that his biological father did not acknowledge paternity of the Applicant as of the date the Applicant's mother naturalized is inconsequential, as the relationship between the Applicant and his biological father was terminated upon the Applicant's adoption on [REDACTED] 1975. As of that date, the Applicant's biological father was no longer considered his "father" under Connecticut law.

Based on the foregoing, we affirm our previous determination that the Applicant was not eligible to derive citizenship solely from his mother pursuant to former section 321(a)(3), and his citizenship claim could only be considered under former section 321(a)(1) of the Act, which requires naturalization of both parents. Because only the Applicant's mother, and not his adoptive father,

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naturalized before the Applicant's 18th birthday, the Applicant could not derive citizenship under former section 321(a)(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 reconsider is denied.

Cite as *Matter of K-F-J-*, ID# 15172 (AAO Feb. 12, 2016)