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

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

MATTER OF A-J-

DATE: FEB. 18, 2016

APPEAL OF NEW YORK, NEW YORK DISTRICT OFFICE DECISION

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

The Applicant, a native and citizen of Afghanistan, 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 *See* Immigration and Nationality Act (the Act) § 321, 8 U.S.C. § 1432 (Repealed by Sec. 103(a), title I, Child Citizenship Act of 2000, Pub.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 District Director, New York, New York, denied the application. The matter is now before us on appeal. The appeal will be dismissed.

The Applicant was born in Afghanistan on [REDACTED]¹ to parents who were citizens of Afghanistan and married at the time of his birth. The Applicant was admitted to the United States as a refugee on March 23, 1984, and adjusted his immigration status to lawful permanent resident on May 14, 1985, at the age of [REDACTED]. The Applicant's father became a U.S. citizen through naturalization on May 18, 1995, when the Applicant was [REDACTED] years old. The Applicant's mother became a U.S. citizen through naturalization on May 11, 2000, when the Applicant was over [REDACTED] years of age. 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.

The Applicant initially filed Form N-600, Application for Certificate of Citizenship, on April 7, 1997. In a decision dated September 30, 2002, the Director of the District Office of the Immigration and Naturalization Service in Washington, District of Columbia, noted that the Applicant did not appear for scheduled examinations of his N-600 application on January 12, 1999, and May 28, 2002, and furthermore determined that the Applicant did not qualify for citizenship under former section 321(a) of the Act, as the Applicant did not establish that both of his parents naturalized prior to his 18th birthday on [REDACTED] as required for applicants with parents who are married under section 321(a)(1) of the Act. The Form N-600 was denied accordingly.

¹ Evidence in the record shows that the Applicant also used the date of birth [REDACTED] a date of birth he indicated on his initial Form N-600, Application for Certificate of Citizenship, filed on April 7, 1997, and the date of birth [REDACTED] attested to through four affidavits dated in 1999. A preponderance of the evidence in the record indicates that the Applicant's correct date of birth is [REDACTED] and the Applicant entered his date of birth as [REDACTED], on his most recent N-600.

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The Applicant filed a second Form N-600 on October 31, 2013.² In a decision dated November 17, 2014, the Director stated that the Applicant was ineligible to derive U.S. citizenship under section 320 of the Act, 8 U.S.C. § 1431, as he was over the age of 18 as of the effective date for that law. In addition, the Director stated that the Applicant was not eligible to derive U.S. citizenship under former section 321 of the Act because the documentation related to the divorce of the Applicant's parents appears to have been executed in 2002, after the Applicant was 18 years of age, and that the record did not contain evidence showing that the Applicant was in the custody of his U.S. citizen father between May 18, 1995, the date his father naturalized, and [REDACTED] the date the Applicant turned 18 years of age, as required under former section 321(a)(3) of the Act for applicants whose parents are legally separated. The second Form N-600 was denied accordingly.

On appeal, the Applicant states that he did indicate that he was filing the Form N-600 pursuant to section 320 of the Act, as stated by the Director, but rather under former section 321 of the Act, that the divorce between his parents took place in 1991, when he was [REDACTED] years of age, and the divorce documentation indicates that he was in the custody of his father, fulfilling the requirements set forth in former section 321(a)(3) of the Act.

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 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 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 [REDACTED]. Because the Applicant was over the age of 18 on February 27, 2001, his application is adjudicated under former section 321 of the Act. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001).

To determine whether the Applicant derived citizenship from parents, we apply "the law in effect when he fulfilled the last requirement for derivative citizenship." *Ashton v. Gonzales*, 431 F.3d 95, 97 (2d Cir. 2005) (citing *Rodriguez-Tejedor*, 23 I&N Dec. 153, 163 (BIA 2001)). The relevant

² According to 8 CFR § 341.5(3), after an application for a certificate of citizenship has been denied and the time for appeal has expired, U.S. Citizenship and Immigration Services (USCIS) will reject a subsequent application submitted by the same individual and the applicant will be instructed to submit a motion to reopen or reconsider in accordance with 8 CFR § 103.5. As such, the Form N-600 filed by the applicant on April 28, 2014, will be considered a motion for reopen, as the application stated facts that were supported by additional affidavits and documentary evidence.

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citizenship law in effect when he fulfilled the last requirement, that is, when the Applicant turned 18 years of age in 1997, was former section 321(a) of the Act. It provided, in pertinent part:

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 satisfied the requirement of former section 321(a)(5) of the Act as he was admitted to the United States and became a lawful permanent resident in 1985 when he was [redacted] years old.

The Applicant's father became a naturalized U.S. citizen on May 18, 1995, when the Applicant was [redacted] years old. However, the Applicant's mother did not become a naturalized U.S. citizen until May 11, 2000, when the Applicant was [redacted] years of age, and over the age of 18. Therefore, the Applicant did not derive U.S. citizenship through the naturalization of both parents while under the age of 18 years, as required under former sections 321(a)(1) and 321(a)(4) of the Act.

In order to derive U.S. citizenship through his father only, who naturalized prior to his 18th birthday, the Applicant must show that a legal separation between his parents took place prior to his 18th birthday, and that his was in the legal custody of his father following the separation.

The record includes documentation related to a divorce under Sharia law between the Applicant's parents, which ostensibly took place in Pakistan on [redacted] 1991, when the Applicant was [redacted] years of age. This documentation includes an affidavit attested to on October 30, 2002, which states that the Applicant's parents were divorced in 1991; a divorce letter signed by the Applicant's father, the English translation of which provides no date; and an order on authentication of foreign divorce certificate from the Circuit Court of [redacted] Virginia, dated December 2, 2005.

However, there is no documentation in the record submitted prior to the year 2002 which would verify or indicate that a divorce occurred between the Applicant's parents prior to that year. Instead, materials submitted before the year 2002 indicate that the Applicant's parents were not divorced in 1991 as claimed. The Applicant's father filed Form N-400, Application for Naturalization, on February 1, 1995. Therein, the Applicant's father indicated that he had only been married once, that this one marriage was to the Applicant's mother, and that, as of the date of filing, he was still married to the Applicant's mother. The Applicant's mother filed her Form N-400 in 1999, and also clearly stated that she had only been married once, that this one marriage was with the Applicant's father, and that she was still married to the Applicant's father. These statements by the Applicant's parents, made in 1995 and 1999, contradict present claims that they were divorced in 1991. Furthermore, both parents were issued certificates of naturalization prior to the year 2002, and both certificates reflect they were married when they naturalized.

It is incumbent upon an Applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). In this case, there has been no explanation, or evidence, on why the Applicant's parents attested on their Applications for Naturalization, under penalty of perjury, that they were married, when now they and the Applicant claim they were actually divorced.

Moreover, the record includes an opinion from a senior legal specialist at the Library of Congress, dated August 3, 2004, which states that the Applicant's father did not comply with provisions of the 1961 Muslim Family Laws of Pakistan, and therefore it seems that the divorce is not valid for non-compliance with those provisions.

Thus, the record does not establish that the Applicant has shown by a preponderance of the evidence that there was a legal separation between his parents prior to his 18th birthday, as required under section 321(a)(3) of the Act. Strict compliance with statutory prerequisites is required to acquire citizenship. See *Fedorenko v. U.S.*, 449 U.S. 490, 506 (1981).

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 A-J-*, ID# 13992 (AAO Feb. 18, 2016)