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

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

MATTER OF Y-R-H-

DATE: FEB. 18, 2016

APPEAL OF EL PASO FIELD OFFICE DECISION

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

The Applicant, a native and citizen of Mexico, 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 *See* Immigration and Nationality Act (the Act) § 321, 8 U.S.C. § 1432 (Repealed by Sec. 103(a), title I, Child Citizenship Act of 2000, Pub.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, El Paso, Texas, rejected the application, and dismissed a subsequent motion to reopen and reconsider. The matter is now before us on appeal. The appeal will be dismissed.

The Applicant was born in Mexico on [REDACTED] to married parents who were citizens of Mexico at the time of his birth. The Applicant was admitted to the United States as a lawful permanent resident on July 28, 1978. The Applicant's parents never legally separated. The Applicant's mother became a U.S. citizen through naturalization on February 16, 1995, when the Applicant was [REDACTED] years old. The Applicant's father became a U.S. citizen through naturalization on February 26, 1998, when the Applicant was over 18 years of age. The Applicant seeks a certificate of citizenship indicating that she derived U.S. citizenship through her parents under former section 321(a) of the Act.

The Applicant initially filed Form N-600, Application for Certificate of Citizenship, on January 10, 2002. In a decision dated April 22, 2002, the Director of the District Office of the Immigration and Naturalization Service in [REDACTED] Texas determined that the Applicant did not qualify for citizenship under section 301(g) of the Act, 8 U.S.C. § 1401(g), section 320 of the Act, 8 U.S.C. § 1431, nor under section 321 of the Act, 8 U.S.C. § 1431 (repealed), and denied the application accordingly. The Applicant filed a second Form N-600 on June 6, 2014. On July 30, 2014, the Director of the National Benefits Center, U.S. Citizenship and Immigration Services (USCIS), rejected the application, advising the Applicant that she is ineligible to file a second Form N-600 as her previous application has been denied, and advised the Applicant to file Form I-290B, Notice of Appeal or Motion. The Applicant filed Form I-290B on September 23, 2014.

In a decision dated March 31, 2015, the Director of the [REDACTED] Field Office dismissed the motion to reopen or reconsider, stating that the Applicant did not establish that there was a basis for reopening the application, that the Applicant did not show that there was a misapplication of USCIS law or policy, nor did she indicate that a precedent case decision exists which affects the decision to deny the application, referencing 8 C.F.R. § 103.5(a). In the decision, the Director incorrectly stated that the Applicant was over the age of 18 when her mother naturalized on February 16, 1995.

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On appeal, the Applicant states that she was only [redacted] years and [redacted] months old at the time her mother naturalized on February 16, 1995, and therefore she qualifies for derivative citizenship pursuant to either former section 321 of the Act, or section 320 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 appeal.

Because the Applicant was born abroad, she is presumed to be an alien and bears the burden of establishing her 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, her 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 [she] 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 citizenship law in effect when she fulfilled the last requirement, that is, when the Applicant turned 18 years of age in [redacted] was former section 321(a) of the Act. It provided, in pertinent part:

- (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

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(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 some of the requirements for derivative citizenship set forth in former section 321(a) of the Act before her eighteenth birthday. Specifically, the Applicant was admitted to the United States as a lawful permanent resident in 1978 when she was less than [REDACTED] year old, and her mother became a naturalized U.S. citizen when she was [REDACTED] years old. However, the Applicant does not meet the requirements in former section 321(a)(2) of the Act, as neither parent is deceased. Nor is there any indication that she qualifies under former section 321(a)(3) of the Act, as she was born in wedlock, and her parents were not legally separated. Lastly, the Applicant does not fulfill the requirements in former section 321(a)(1) of the Act, because her father did not become a naturalized U.S. citizen until February 26, 1998, when the Applicant was over 18 years of age. Former section 321(a)(1) of the Act requires that both parents become naturalized U.S. citizens while the Applicant is under the age of 18. Only the Applicant's mother became a U.S. citizen prior to the Applicant's 18th birthday. Consequently, the Applicant did not derive citizenship through her parents under former section 321(a) 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 appeal is dismissed.

Cite as *Matter of Y-R-H-*, ID# 15198 (AAO Feb. 18, 2016)