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

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

MATTER OF R-C-B-

DATE: JULY 28, 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 Liberia, seeks a Certificate of Citizenship. *See* Immigration and Nationality Act (the Act) section 321, 8 U.S.C. § 1432, *repealed by* Sec. 103(a), title I, Child Citizenship Act of 2000, Pub.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. Generally, an individual claiming automatic U.S. citizenship after birth and who was born between December 24, 1952, and February 27, 1983, must meet the last of certain conditions by February 26, 2001. 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 District Director, New York, New York, denied the application. The Director concluded that the Applicant was admitted to the United States as a lawful permanent resident in 1991, when he was [REDACTED] old, as required under former section 321(a)(5) of the Act, and that his mother became a naturalized U.S. citizen in 1988, when he was [REDACTED] old, as required under former section 321(a)(4) of the Act. However, the Director held that he could not derive U.S. citizenship pursuant to former section 321(a)(3) of the Act because although he was born out of wedlock, his paternity was established through legitimation.

The matter is now before us on appeal. On appeal, the Applicant submits a brief, a copy of his birth certificate, a letter from himself, a copy of his mother's naturalization certificate, identification documents including his legal permanent resident card, and birth affidavits from his mother and brother. The Applicant claims that the Director erred in finding that he was legitimated by his father. We issued a request for evidence (RFE) asking for additional evidence addressing the issue of whether he was legitimated by his father at any time. In response to this request, evidence including a paternity test, airline ticket stubs and an affidavit from [REDACTED] was provided.

Upon *de novo* review, we will sustain the appeal.

I. LAW

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The Applicant seeks a certificate of citizenship indicating that he derived U.S. citizenship from his U.S. citizen mother. The Applicant was born in Liberia on [REDACTED] to unmarried foreign national parents. The Applicant's parents never married. The Applicant was admitted to the United States as a lawful permanent resident on December 4, 1991. The Applicant's mother became a citizen through naturalization on October 7, 1988.

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.

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- (b) Subsection (a) of this section shall apply to an adopted child only if the child is residing in the United States at the time of naturalization of such adoptive parent or parents, in the custody of his adoptive parent or parents, pursuant to a lawful admission for permanent residence.

## II. ANALYSIS

The only issue on appeal is whether the Applicant was legitimated by [REDACTED] the man named as his father on his birth certificate and on other immigration documents. The Director concluded that the Applicant was admitted to the United States as a lawful permanent resident when he was [REDACTED] old and that his mother became a naturalized U.S. citizen when he was [REDACTED] old, as required under former section 321(a) of the Act. However, the Director found that the Applicant was ineligible to derive U.S. citizenship pursuant to former section 321(a)(3) of the Act because, although he was born out of wedlock, his paternity was established through legitimation. On appeal, the Applicant has established that [REDACTED] is not his biological father, and the Applicant thus derived citizenship through his mother pursuant to former section 321(a) of the Act.

The Applicant appealed the Director's decision indicating that he was not legitimated by the man listed on his birth certificate. To support this assertion, the Applicant submitted a brief, a copy of his birth certificate, a letter from himself, and birth affidavits from his mother and brother. We issued an RFE requesting additional evidence to address the issue of whether the Applicant was legitimated by his father at any time. In response to this request, the Applicant provided results from a paternity test, airline tickets, an affidavit from [REDACTED] and statutory text from the Liberian code.

The Applicant was born on [REDACTED] in Liberia. 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*

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*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 a U.S. citizen mother only if the Applicant was born out of wedlock, his paternity was not established by legitimation, and all of these requirements, including the mother's naturalization, were satisfied before the Applicant's birthday on 1994.

The Applicant has established that he meets several requirements for derivative citizenship under former section 321 of the Act. Specifically, the Applicant was admitted to the United States as a lawful permanent resident and his mother became a naturalized U.S. citizen before he reached his 18th birthday.

At issue is whether the Applicant has shown that paternity was not established through legitimation by . The Applicant asserts that he was not legitimated in accordance with the Laws of Liberia by who never married his mother, although he signed the Applicant's birth certificate. Further, in response to the RFE, the Applicant provided results from a paternity test establishing that is not his biological father. Moreover, the Applicant submitted an affidavit from explaining that he signed the birth certificate because the Applicant's mother, with whom he had a relationship at the time of the Applicant's birth, told him that he was the father. According to the Applicant's mother shortly thereafter told him that he was not the Applicant's father, which ended their relationship. also confirmed statements by the Applicant indicating that he was not at all involved in the Applicant's upbringing or support. As such, although his name is on the Applicant's birth certificate, he is not the natural father of the Applicant. The Applicant was therefore born out of wedlock and not legitimated by his natural father, and he derived citizenship pursuant to former section 321(a) of the act upon the naturalization of his mother.

### III. CONCLUSION

In view of the above, the Applicant has demonstrated that he was born out of wedlock and not legitimated by his natural father. Accordingly, the Applicant has established eligibility for derivative citizenship through his mother 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 met that burden. Accordingly, we sustain the appeal.

**ORDER:** The appeal is sustained.

Cite as *Matter of R-C-B-*, ID# 14567 (AAO July 28, 2016)