



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

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

MATTER OF M-P-

DATE: JUNE 28, 2016

CERTIFICATION OF NEW YORK, NEW YORK DISTRICT OFFICE DECISION

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

The Applicant, a native and citizen of Haiti, 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 *See* Immigration and Nationality Act (the Act) section 321, 8 U.S.C. § 1432, *repealed by* Sec. 103(a), title I, Child Citizenship Act of 2000, Pub.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.

To establish derivative citizenship under former section 321 of the Act, an individual who was born to foreign national parents between December 24, 1952, and February 27, 1983, must show that he or she is residing in the United States as a lawful permanent resident, and that both his or her parents became naturalized U.S. citizens before the individual turned 18. 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, denied the application. The Director concluded that the Applicant did not establish that he derived citizenship solely from his mother because he did not demonstrate that his father was deceased before the Applicant's 18th birthday.

The matter is now before us on certification. The Director's decision will be affirmed and the application will be denied.

**I. FACTS AND PROCEDURAL HISTORY**

The Director denied the application finding that the Applicant did not derive citizenship from his mother pursuant to section 320 of the Act, 8 U.S.C. § 1431, because he was over 18 when the law went into effect on February 27, 2001. The Director also considered whether the Applicant qualified for derivative citizenship pursuant to former section 321 of the Act, but determined that the Applicant was not eligible as he was legitimated in Haiti, and only the Applicant's mother naturalized prior to his 18th birthday.

(b)(6)

*Matter of J-W-M-*

On appeal, the Applicant asserted that he derived U.S. citizenship from his mother pursuant to former section 321(a)(2) of the Act because his natural father died in 1994, before the Applicant attained the age of 18. In support of this assertion, the Applicant submitted his father's death certificate, issued in 2013 by a civil registry clerk at [REDACTED] Haiti. While we concluded on appeal that the Applicant was not eligible to derive citizenship from his mother under former section 321(a)(3) of the Act because he was legitimated and his parents were not legally separated, we remanded the matter to the Director to evaluate the validity of the death certificate and the Applicant's eligibility for derivative citizenship under former section 321(a)(2) of the Act.

The Director considered the death certificate submitted by the Applicant and determined that because it was issued by a local civil registry clerk in 2013, 19 years after the purported date of the father's death, it was insufficient to establish that the Applicant's father did in fact die in 1994, as claimed. The Director issued a request for evidence (RFE) asking the Applicant to submit, in part, a copy of the father's death certificate extract from the National Archives of Haiti, and any contemporaneously issued documents pertaining to the father's death. In response to the Director's request, the Applicant submitted another death certificate, issued on July 7, 2015, by a civil registry official at [REDACTED] Haiti. The Director considered the two death certificates the Applicant submitted to establish that his father was deceased, but determined that the documents were unreliable as they were not timely issued, and they contained conflicting information about the decedent's age date of death and his age at the time of death. The Director again denied the application finding that the Applicant did not establish that his father was deceased and, thus, that he was eligible to derive citizenship solely through his mother.

The Director certified the matter to us for review. The certification notice advised the Applicant of his right to submit a brief or other written statement for us to consider. While the certification was pending before us, the Applicant submitted a death certificate of his father, which was issued by the National Archives of Haiti on August 21, 2015.

## II. LAW

The record reflects that the Applicant was born in Haiti on [REDACTED] to foreign national parents who were not married. The Applicant's mother became a U.S. citizen through naturalization on November 1, 1983. There is no evidence that the Applicant's father is, or was at any time a U.S. citizen. The Applicant was admitted to the United States as a lawful permanent resident on December 28, 1984. The Applicant seeks a certificate of citizenship pursuant to former section 321 of the Act based on the claim that he derived U.S. citizenship from his mother.

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 Applicant turned 18 on [REDACTED] when former section 321 of the Act was in effect. 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, repealed section 321 of the Act and amended sections 320 and 322 of the Act. However, the provisions of the CCA are not retroactive, and the

amended sections 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.

### III. ANALYSIS

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).

Generally, naturalization of both parents is required to establish derivative citizenship under former section 321 of the Act. However, an applicant may also establish derivative citizenship through only one parent if the applicant meets certain conditions set forth in former sections 321(a)(2) and (a)(3) of the Act. On appeal, we concluded that the Applicant was not eligible to derive citizenship pursuant to the provisions of former section 321(a)(3) of the Act because his parents were not legally separated and because his paternity was established by legitimation under the law of Haiti. As the Applicant does not contest this determination, and there is nothing in the record indicating that our

(b)(6)

*Matter of J-W-M-*

conclusion is incorrect, we affirm on certification that the Applicant did not derive citizenship from his mother pursuant to former section 321(a)(3) of the Act.

The Applicant contends, however, that he is eligible to derive citizenship from his mother pursuant to former section 321(a)(2) of the Act. To establish derivative citizenship from his mother under former section 321(a)(2) of the Act, the Applicant must demonstrate that his father died before the Applicant reached the age of 18, and that he resided in the United States in the legal custody of his mother pursuant to lawful admission to the United States for permanent residence. The evidence in support of the Applicant's citizenship claim includes, but is not limited to: birth, baptismal, and death certificates, and the naturalization certificate of the Applicant's mother.

The record reflects that the Applicant was under the age of 18 when his mother naturalized and when he was admitted to the United States as a lawful permanent resident. Accordingly, the Applicant meets the age and residence requirements set forth in former sections 321(a)(4) and (5) of the Act. The only issue to be decided, therefore, is whether the Applicant has established that his father died when the Applicant was under the age of 18.

Upon review of the entire record, we conclude that the Applicant has not demonstrated by a preponderance of evidence that his father died in 1994, as the Applicant claims.

In evaluating the evidence, we are guided by *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989), which states that "[t]ruth is to be determined not by the quantity of evidence alone but by its quality." *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, U.S. Citizenship and Immigration Services (USCIS) must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true. Even if USCIS has some doubt as to the truth, if the Applicant submits relevant, probative, and credible evidence that leads the agency to believe that the claim is "probably true" or "more likely than not," the Applicant has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (defining "more likely than not" as a greater than 50 percent probability of something occurring). If USCIS can articulate a material doubt that leads it to believe that the claim is probably not true, then USCIS may deny the application. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

To show that his father is deceased, the Applicant initially submitted two death certificates. The first death certificate was issued in 2013, by a civil registry clerk at Pointe à Raquettes, Haiti, based on the information provided in 2012 by one deponent. The certificate states that the Applicant's father died on [REDACTED] 1994, at the age of 60, in [REDACTED] Haiti. The Director determined that this death certificate was unreliable, as it was issued 19 years after the death of the Applicant's father, and requested the Applicant to submit an extract of his father's timely-registered death certificate from the National Archives of Haiti, accompanied by hospital, medical, religious, insurance, and public records, or other contemporaneously issued documents. The Applicant responded to the request by submitting another death certificate issued by a civil registry official at [REDACTED] Haiti, in 2015. This death certificate, based on the information provided by

(b)(6)

*Matter of J-W-M-*

one individual in 2015, states that the Applicant's father died on [REDACTED] 1994, at the age 63, in [REDACTED] Haiti. Later in 2016, we also received a copy of a death certificate extract the Applicant obtained from the registry of death certificates at the National Archives of Haiti. The extract indicates that the death of the Applicant's father was registered by a civil registry clerk at the National Archives of Haiti on August 21, 2015, based on the information in the 2015 death certificate issued locally at [REDACTED] Haiti.

Just like a delayed birth certificate, a delayed death certificate does not carry the same evidentiary weight as a document that was registered contemporaneously with the individual's death. *See generally Matter of Lugo-Guadiana*, 12 I&N Dec. 726, 729 (BIA 1968). A delayed certificate must be evaluated in light of other evidence in the record and in light of the circumstances of the case. *Matter of Bueno-Almonte*, 21 I&N Dec. 1029, 1033 (BIA 1997).

The two death certificates the Applicant initially submitted to demonstrate that his father was deceased before the Applicant's 18th birthday were obtained from local authorities. They were issued many years after the claimed death of the Applicant's father in 1994. In addition, these certificates provide inconsistent information about the date and place of death of the Applicant's father, and about his age at the time of death. As such, the certificates cannot be considered reliable proof that the Applicant's father did, in fact, die in 1994. The Applicant has not presented an explanation to overcome the inconsistencies in the two death certificates he submitted, or any additional primary evidence to substantiate the information in either of the certificates.

In addition, the Applicant has not demonstrated that an extract of his father's timely-registered death certificate from the National Archives of Haiti specifically requested by the Director was unavailable or could not be obtained.<sup>1</sup>

The regulations at 8 C.F.R. § 103.2(b)(2) provide, in part:

*Submitting secondary evidence and affidavits—(i) General.* The non-existence or other unavailability of required evidence creates a presumption of ineligibility. If a required document, such as a birth or marriage certificate, does not exist or cannot be obtained, an applicant or petitioner must demonstrate this and submit secondary evidence, such as church or school records, pertinent to the facts at issue. If secondary evidence also does not exist or cannot be obtained, the applicant or petitioner must demonstrate the unavailability of both the required document and relevant secondary evidence, and submit two or more affidavits, sworn to or affirmed by persons who are not parties to the petition who have direct personal knowledge of the event and circumstances. Secondary evidence must overcome the

---

<sup>1</sup> See The Department of State's Haiti Reciprocity Schedule at <http://travel.state.gov/content/visas/en/fees/reciprocity-by-country/HA.html>. The Haiti Reciprocity Schedule provides that transcripts of death certificates, known as "extraits" can be obtained from National Archives.

unavailability of primary evidence, and affidavits must overcome the unavailability of both primary and secondary evidence.

(ii) *Demonstrating that a record is not available.* Where a record does not exist, the applicant or petitioner must submit an original written statement on government letterhead establishing this from the relevant government or other authority. The statement must indicate the reason the record does not exist, and indicate whether similar records for the time and place are available. However, a certification from an appropriate foreign government that a document does not exist is not required where the Department of State's Foreign Affairs Manual indicates this type of document generally does not exist. An applicant or petitioner who has not been able to acquire the necessary document or statement from the relevant foreign authority may submit evidence that repeated good faith attempts were made to obtain the required document or statement. However, where USCIS finds that such documents or statements are generally available, it may require that the applicant or petitioner submit the required document or statement.

While the Applicant has submitted an extract of his father's death record from the National Archives of Haiti, the extract is based on the information provided by one individual in 2015, which is inconsistent with the information another individual provided in 2012. The Applicant has not submitted evidence to show that the information about his father's death was independently verified by the National Archives, and he did not present other documents to corroborate his claim of the father's death in 1994.

In view of the above, we find that the Applicant has not demonstrated by a preponderance of evidence that his father was deceased before the Applicant's 18th birthday. Therefore, the Applicant has not established that he derived U.S. citizenship from his mother pursuant to former section 321(a)(2) of the Act.

#### IV. CONCLUSION

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 initial decision of the District Director, New York, New York, dated October 29, 2015, is affirmed, and the application is denied.

Cite as *Matter of M-P-*, ID# 16251 (AAO June 28, 2016)