(b)(6)

U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF F-T-H-

DATE: MAY 5, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Applicant, a native and citizen of Guyana, seeks a Certificate of Citizenship. *See* Immigration and Nationality Act (the Act) section 320, 8 U.S.C. § 1431. 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, to establish derivative U.S. citizenship under section 320 of the Act, such individual must be born after February 27, 1983, have at least one U.S. citizen parent, and be residing in that parent's custody in the United States as a lawful permanent resident before 18 years of age.

The District Director, New York City, New York, denied the application and a subsequent motion to reopen and reconsider. The Director concluded that the Applicant did not establish derivative citizenship under section 320 of the Act because he was over 18 years of age when the law went into effect on February 27, 2001. The Director further found that the Applicant did not derive citizenship pursuant to the provisions of former section 321 of the Act, 8 U.S.C. § 1432, as he was over the age of 18 when his mother naturalized. We dismissed the Applicant's appeal. In our dismissal on appeal, we indicated that, pursuant to an overseas investigation, the Applicant's second birth certificate, which reflects a birth date of [redacted] was determined to be fraudulent. We found that the Applicant's date of birth to be [redacted] and consequently, we affirmed the Director's decisions on the Applicant's derivative citizenship pursuant to section 320 of the Act and former section 321 of the Act.

The matter is now before us on a motion to reconsider. In the motion, the Applicant asserts that we should reconsider our decision because the Director did not confront the Applicant with the derogatory information pertaining to the documents the Applicant submitted to establish that he was born on [redacted] and that he only learned of existence of such derogatory information from our decision dismissing the appeal.

We will deny the motion to reconsider.

I. FACTS AND PROCEDURAL HISTORY

The Applicant's immigration records indicate that he was born in Guyana on [redacted] to married foreign national parents. The Applicant's biological parents subsequently divorced, and the

Applicant's mother married a U.S. citizen, the Applicant's stepfather. On 1997, the Applicant was admitted to the United States as a lawful permanent resident, stepchild of a U.S. citizen. The Applicant's mother became a U.S. citizen through naturalization on 2005. On November 24, 2012, the Applicant was ordered removed from the United States to Guyana. Soon after the removal order was issued, on or about February 6, 2013, the Applicant submitted Form N-600, Application for Certificate of Citizenship, indicating that he derived citizenship from his U.S. citizen stepfather under section 320 of the Act. On the Form N-600, the Applicant represented that he was born on , and that his stepfather adopted him in Guyana on , 1997. In support of these representations, the Applicant submitted a copy of a birth certificate, issued in Guyana on December 13, 2012, showing his date of birth as and a copy of a Guyanese adoption document issued on 2003. The date of the Applicant's birth on the adoption document is also listed as

The record contains two birth certificates for the Applicant. One certificate, which was submitted before the Applicant's admission to the United States for permanent residence, shows that he was born on and that his birth was registered in Guyana, on 1980. The other certificate, which was issued on December 13, 2012, and which the Applicant submitted in support of the Form N-600, indicates that he was born on On April 17, 2013, the Director issued a request for additional evidence (RFE), asking the Applicant to submit "all evidence [he] used to obtain [his] most recent birth certificate in Guyana, including copies of any applications, affidavits, or judgments, and transcripts of any hearings involved in obtaining the new birth certificate." In response to the RFE, the Applicant submitted an affidavit from his mother's niece, in which she claimed that she obtained the birth certificate in person from the birth registry office of Guyana, and that the application she completed to apply for this birth certificate was no longer available.

On August 15, 2013, the Director denied the Applicant's Form N-600 finding that the Applicant did not meet the age limit requirement to establish derivative citizenship under either former section 321 of the Act or the amended section 320 of the Act. In the denial decision, the Director advised the Applicant that the birth certificate he submitted to show that he was born on supported only by a single affidavit, without an explanation, was unreliable in view of the overwhelming evidence that the Applicant was in fact born on

On October 2, 2013, the Applicant filed a motion to reopen and reconsider the denial of his Form N-600, maintaining that he was born on In support of the motion, the Applicant submitted an affidavit from his mother, in which she claimed that the Applicant was born on and named after his older brother who was born on but who later died on According to the Applicant's mother, the Applicant's father gave the Guyanese authorities his first-born son's date of birth, when he applied for the Applicant's birth certificate. To substantiate his mother's claims, the Applicant submitted a copy of the death certificate of his purported older brother, issued in Guyana on June 9, 2013. On October 28, 2014, the Director dismissed the motion, advising the Applicant that the documents he submitted to establish that he was born on , his birth certificate and the death certificate of his purported older brother,

were determined by the U.S. Citizenship and Immigration Services (USCIS) to be fraudulent. Based on the above, the Director reaffirmed the decision to deny the Applicant's Form N-600 on the ground that the Applicant did not satisfy the age limit requirement for derivative citizenship under section 320 of the Act.

On August 10, 2015, we dismissed the Applicant's appeal, concluding that because the Applicant did not show that he was under the age of 18 on February 27, 2001, the effective date of the CCA, he did not establish derivative citizenship under section 320 of the Act. In addition, we found that the Applicant did not satisfy the requirements for derivative citizenship under former section 321 of the Act as he was over 18 when his mother naturalized. On September 14, 2015, the Applicant filed the instant motion seeking reconsideration of our decision dismissing the appeal.

II. LAW

The Applicant is seeking a certificate of citizenship indicating that he derived citizenship from his U.S. citizen stepfather under section 320 of the Act. 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). In the present matter, the Applicant was admitted to the United States as a lawful permanent resident on [redacted] 1997, to reside with his U.S. citizen stepfather who he asserts adopted him on [redacted] 1997. The Applicant maintains that he was born on [redacted]

At the time the Applicant was admitted to the United States for permanent residence on [redacted] 1997, former section 321 of the Act was in effect. However, to establish derivative citizenship under former section 321 of the Act, the Applicant would have to show that both his parents became naturalized U.S. citizens before he turned 18.[1] The Applicant does not contest that he is ineligible for derivative citizenship under former section 321 of the Act, as regardless of whether he was born in [redacted] or [redacted] he was over the age of 18 when his mother naturalized in 2005.

---

[1] 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; ... 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.

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 section 320 to allow derivative citizenship of certain foreign-born children who have at least one U.S. citizen parent and are under the age of 18 as of the date of the effective date of the CCA. The amended section 320 of the Act provides, in pertinent part:

Section 320 of the Act provides, in pertinent part:

> (a) A child born outside of the United States automatically becomes a citizen of the United States when all of the following conditions have been fulfilled:
>
> (1) At least one parent of the child is a citizen of the United States, whether by birth or naturalization.
>
> (2) The child is under the age of eighteen years.
>
> (3) The child is residing in the United States in the legal and physical custody of the citizen parent pursuant to a lawful admission for permanent residence.
>
> (b) Subsection (a) shall apply to a child adopted by a United States citizen parent if the child satisfies the requirements applicable to adopted children under section 101(b)(1).

As the Applicant claims that he was adopted by his U.S. citizen stepfather, he falls under the provisions of section 320(b) of the Act. Therefore, the Applicant must also establish that he meets the requirements applicable to adopted children under section 101(b)(1) of the Act, 8 U.S.C. § 1101(b)(1), which provides, in pertinent part:

> The term "child" means an unmarried person under twenty-one years of age who is-
> ...
>
> (E) (i) a child adopted while under the age of sixteen years if the child has been in the legal custody of, and has resided with, the adopting parent or parents for at least two years ....

The provisions of the CCA are not retroactive, and the amended section 320 the Act applies only to individuals who were not yet 18 years old as of February 27, 2001. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001).

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).

The issue in these proceedings is whether the Applicant has established that he was under the age of 18 on February 27, 2001, when the amended provisions of section 320 of the Act went into effect and, thus, whether he is eligible to derive citizenship solely from his U.S citizen stepfather who the Applicant claims adopted him on [redacted] 1997.

As stated above, the Director denied the Applicant's Form N-600 concluding that the overwhelming evidence of the record indicated that the Applicant was born on [redacted] and, thus, that he was too old to derive citizenship under either former section 321 or section 320 of the Act. We dismissed the Applicant's appeal, as the record reflected that the Applicant consistently maintained that he was born on [redacted] and the only evidence of his claimed birth on [redacted] was the birth certificate issued on December 13, 2012, which the Applicant submitted in support of the Form N-600. We considered the affidavit provided by the Applicant's mother, but found it to consist of largely unverifiable statements regarding the death of the Applicant's alleged older brother whose identity and date of birth were purportedly transferred to the Applicant for emotional and cultural reasons. We concluded that because the Applicant did not submit credible evidence to corroborate his mother's statements we would not disturb the Director's factual findings regarding his [redacted] date of birth, in light of the fact that that an overseas investigation confirmed the documents submitted by the Applicant to be fraudulent.

We also reviewed a copy of an adoption decree the Applicant submitted to show that he was adopted by his stepfather on [redacted] 1997. Although the adoption decree, issued on [redacted] 2003, lists the Applicant's date of birth as [redacted] the immigrant visa application, signed by the Applicant and his mother just 5 days before the adoption on [redacted] 1997, lists the Applicant's date of birth as [redacted] Furthermore, in the absence of additional evidence to explain the basis for the [redacted] date of birth listed in the document, we concluded that the Applicant was in fact born in [redacted] as indicated by the historical contents of his immigration file. Thus, because the Applicant was over the age of 16 when he was purportedly adopted by his stepfather, he did not satisfy the requirements of section 101(b)(1)(E)(i) of the Act pertaining to adopted children. Finally, even if the Applicant was in fact legally adopted by his stepfather on [redacted] 1997, he was over the age of 18 on February 27, 2001, too old to derive citizenship under section 320 of the Act.

On September 14, 2015, the Applicant filed the instant motion seeking reconsideration of our decision dismissing the appeal. The Applicant states that the matter warrants reconsideration as it was only through the disclosure of the overseas investigation in our decision on appeal, that he learned that the documents he submitted were determined to be fraudulent. The Applicant asserts that because the Director did not confront him with the report of investigation that was materially derogatory to the Applicant's claim of citizenship, the Director deprived the Applicant of an

opportunity to respond to the derogatory information, thus violating the provisions of the regulations at 8 C.F.R. §§ 103.2(b)(16)(i), 103.2(b)(16)(ii), 103.2(b)(8)(iv), and 103.3(a)(1)(i).

The regulation at 8 C.F.R. § 103.2(b)(16) states, in pertinent part:

> *Inspection of evidence.* An applicant or petitioner shall be permitted to inspect the record of proceeding which constitutes the basis for the decision, except as provided in the following paragraphs.
>
> (i) *Derogatory information unknown to petitioner or applicant.* If the decision will be adverse to the applicant or petitioner and is based on derogatory information considered by the Service and of which the applicant or petitioner is unaware, he/she shall be advised of this fact and offered an opportunity to rebut the information and present information in his/her own behalf before the decision is rendered, except as provided in paragraphs (b)(16)(ii), (iii), and (iv) of this section. Any explanation, rebuttal, or information presented by or in behalf of the applicant or petitioner shall be included in the record of proceeding.
>
> (ii) *Determination of statutory eligibility.* A determination of statutory eligibility shall be based only on information contained in the record of proceeding which is disclosed to the applicant or petitioner, except as provided in paragraph (b)(16)(iv) of this section.

The record reflects that the overseas investigation was conducted between August and September 2014, after the Director had already denied the Applicant's Form N-600 on August 15, 2013. Accordingly, the Director could not inform the Applicant of the results of the investigation prior to the denial of the Form N-600. The derogatory information on which the Director relied at the time the Form N-600 was denied pertained to the historical contents of the Applicant's immigration file, which contradicted the Applicant's claim that he was born on [redacted] This information, which included the documents the Applicant submitted in support of the immigrant visa application, sworn statements and testimony he provided in removal proceedings, and applications for various immigration benefits, was discussed in detail in the Director's denial decision. We agree with the Applicant that pursuant to 8 C.F.R. § 103.2(b)(16)(i), USCIS must give an applicant an opportunity to rebut the derogatory information on which the decision will be based. However, this requirement applies only to the derogatory information unknown to the applicant. As the Applicant completed and signed various immigration forms, statements, and applications throughout the years confirming that he was born on [redacted], the Applicant must have been aware that the birth certificate with the [redacted] date of birth he submitted to support his claim of derivative citizenship would raise questions as to its validity. Accordingly, we find that the procedure set forth in the regulation at 8 C.F.R. § 103.2(b)(16)(i) is not applicable in this case. The derogatory information from the overseas investigation was received after the denial of the Applicant's Form N-600, and it merely confirmed the Director's initial adverse determination regarding the validity of the evidence the

Applicant submitted to establish that he was born of . For the same reason, we are not persuaded by the Applicant's assertions that USCIS violated the regulations at 8 C.F.R. § 103.2(b)(8)(iv)[2] and 8 C.F.R. § 103.3(a)(1)(i)[3] by not informing him of the results of the overseas investigation in the RFE and in the Form N-600 denial notice.

However, even if we accepted the Applicant's argument on appeal that the Director deprived him of an opportunity to respond to the information in the overseas investigation report, the Applicant has since had such an opportunity as we have advised him in our August 10, 2015, decision that the birth and death certificates the Applicant submitted to show that he was born on were determined to be fraudulent by an overseas investigation conducted in consultation with Guyanese officials.

On motion, the Applicant does not contest that the documents he presented are fraudulent. Furthermore, the Applicant does not offer evidence to demonstrate that the results of the overseas investigation were in error, and that the documents he submitted to establish that he was born on : the birth certificate issued on December 13, 2012, and the death certificate of his purported older brother issued on September 6, 2013, are in fact genuine documents. As the Applicant has not demonstrated that our decision was incorrect based on the evidence of the record, or as a matter of law or policy, we will deny the motion to reconsider. *See* 8 C.F.R. § 103.5(a)(2)(iii)(3).

IV. CONCLUSION

Based on the foregoing, we affirm our previous determination that the Applicant did not derive citizenship under section 320 of the Act, because he has not established that he was under the age of 18 on February 27, 2001, when the amended provisions of section 320 of the Act took effect.

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 F-T-H-*, ID# 15934 (AAO May 5, 2016)

---

[2] The regulation at 8 C.F.R. § 103.2(b)(8)(iv) provides, in part, that a request for evidence or notice of intent to deny will be communicated by regular or electronic mail and will specify the type of evidence required, and whether initial evidence or additional evidence is required, or the bases for the proposed denial sufficient to give the applicant or petitioner adequate notice and sufficient information to respond.

[3] The regulation at 8 C.F.R. § 103.3(a)(1)(i), provides, in part, that when a Service officer denies an application or petition filed, the officer shall explain in writing the specific reasons for denial.