



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

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

MATTER OF M-M-A-K-

DATE: SEPT. 23, 2016

MOTION ON ADMINISTRATIVE APPEAL OFFICE DECISION

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

The Applicant, a native and citizen of Yemen, 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 *See* Immigration and Nationality Act (the Act) section 321, 8 U.S.C. § 1432, *repealed by* Sec. 103(a), title I, Child Citizenship Act of 2000 (CCA), Pub.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 is 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 Office, denied the Applicant's Form N-600, Application for Certificate of Citizenship. The Director determined that the Applicant did not acquire U.S. citizenship at birth under former section 301(a)(7) of the Act, 8 U.S.C. § 1401(a)(7), because he did not demonstrate that his father was physically present in the United States for the requisite time period. The Director found further that the Applicant did not derive citizenship through his father under former section 321(a) of the Act, because his father became a citizen through naturalization before the Applicant's birth. In addition, the Director found that the Applicant did not derive citizenship through his father under section 320 of the Act, 8 U.S.C. § 1431, *as amended by* the CCA because the Applicant was over the age of 18 on February 27, 2001, when the provision went into effect.

We dismissed the matter on appeal. We determined that the Applicant did not establish that he derived U.S. citizenship from his father under former sections 320 and 321(a) of the Act, as in effect prior to February 27, 2001, because those sections provided for derivative citizenship upon naturalization of the foreign national parent, and the Applicant's father was naturalized before the Applicant's birth. We found that the Applicant also did not establish that he qualified for derivative citizenship through his father under former section 322 of the Act, 8 U.S.C. § 1433, as in effect prior

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to February 27, 2001, because he did not meet application approval and oath of allegiance requirements prior to his 18th birthday. Lastly, we concluded that the Applicant did not establish that he acquired citizenship from his citizen father at birth under former section 301(a)(7) of the Act, because he did not demonstrate that his father met U.S. physical presence requirements prior to the Applicant's birth.

We denied a subsequent motion to reconsider our decision on the grounds that the Applicant did not establish that he was eligible for derivative citizenship through his father under former section 320 of the Act, and because he did not demonstrate that we applied the law or U.S. Citizenship and Immigration Services (USCIS) policy incorrectly in our decision on appeal.

The matter is now before us on a second motion to reconsider. The Applicant claims in this motion that legal decisions and policy guidance demonstrate that it does not matter in which order former section 321(a) of the Act requirements are met, so long as the requirements are satisfied prior to the child's 18th birthday. The Applicant asserts that our finding, that he did not derive citizenship through his father, is contrary to these legal decisions and policy guidance. He states that the record establishes that all of the requirements for derivative citizenship under former section 321(a) of the Act were met prior to his 18th birthday, and that he is therefore eligible for derivative citizenship through his father.

The motion to reconsider will be denied.

## I. LAW

The Applicant seeks a Certificate of Citizenship indicating that he derived citizenship from his U.S. citizen father. The Applicant was born in Yemen on [REDACTED] to married parents. His father, now deceased, became a U.S. citizen through naturalization in November 1975, prior to the Applicant's birth. The record does not reflect that the Applicant's mother was a U.S. citizen. The Applicant was admitted into the United States as a lawful permanent resident in November 1995, at age [REDACTED].

Former section 321 of the Act, in effect prior to February 27, 2001, 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

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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.

## II. ANALYSIS

The Applicant does not contest our previous findings that he did not establish eligibility for derivative citizenship under former sections 320 and 322 of the Act, and under section 320 of the Act, as amended. He also does not contest our previous finding that he did not demonstrate that he acquired citizenship through his father at birth under former section 301(a)(7) of the Act. The only issue in this motion to reconsider is whether our finding on the Applicant's previous motion (that the Applicant did not establish eligibility for derivative citizenship under former section 321(a) of the Act) was in error.

The Applicant asserts that our finding on his previous motion was contrary to established case law and guidance. He acknowledges that his father became a naturalized citizen in 1975, ■ years before the Applicant was born. The Applicant contends, however, that this is not relevant because legal decisions and USCIS and Department of State policy do not specify a particular order in which conditions under former section 321(a) of the Act must be satisfied, and require only that all conditions be met prior to a child's 18th birthday. The Applicant indicates that all of the conditions for derivative citizenship under former section 321(a) of the Act, including his father's naturalization as a U.S. citizen, were met prior to his 18th birthday, and that he therefore derived citizenship through his father.

In support of his assertions, the Applicant submits USCIS Adjudicator's Field Manual naturalization charts and documents, USCIS Policy Manual evidence, and Department of State Passport Bulletin and Foreign Affairs Manual information. He also refers to statements made at a New York District Director liaison committee meeting held in 2016. In addition, the Applicant submits three legal decisions: *In re Fuentes-Martinez*, 21 I&N Dec. 893 (BIA 1997); *Matter of Baires-Larios*, 24 I&N Dec. 467 (BIA 2008); and *Nwozuzu v. Holder*, 726 F.3d 323 (2d Cir. 2013).

The entire record was reviewed and considered in rendering a decision on the motion to reconsider. Upon review, we find that the Applicant has not demonstrated that our prior decision was based on an incorrect application of law or policy, or that he is eligible to derive citizenship through his father under former section 321(a) of the Act.

The Applicant claims that he derived citizenship through his father under former section 321(a)(2) of the Act, in that prior to his 18th birthday, he was admitted into the United States as a lawful permanent resident, his father qualified as a surviving parent, and his father was a U.S. citizen through naturalization. The Applicant contends that legal decisions and USCIS and Department of State policy state that a child may derive citizenship under former section 321(a) of the Act so long as all of the requirements are satisfied prior to the child's 18th birthday. He concludes that he is therefore eligible to derive citizenship through his father, despite the fact that his father was already a naturalized U.S. citizen at the time of his birth. We find that the plain language of former section 321(a), and the legal decisions and policy guidance in the record do not support the Applicant's contentions.

The statutory language contained in former section 321(a) of the Act reflects, as a preliminary requirement, that the provision applies only to "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." *See also, Barthelemy v. Ashcroft*, 329 F. 3d. 1062, 1064 (9th Cir. 2003) (clarifying that, "as [the applicant] was born abroad to alien parents, derivative citizenship in this case is governed by Immigration and Nationality Act . . . section 321(a)"; *Pierre v. Holder*, 738 F.3d 39, 52 (2d Cir. 2013) (explaining that in enacting former section 321(a) of the Act, Congress "intended to assure, both as to children of married parents and children out of wedlock, that the interests of a known alien parent not invariably be trumped by those of the naturalizing parent.") A plain reading of the statute therefore shows that former section 321(a) of the Act does not apply to a child born to a naturalized U.S. citizen parent.

We acknowledge that the U.S. Second Circuit Court of Appeals and the Board of Immigration Appeals have held that a child may derive citizenship under former section 321(a) of the Act, as long as all required actions took place before the child's 18th birthday. *See Nwozuzu v. Holder*, 726 F.3d 323, *supra*; *In re Fuentes-Martinez*, 21 I&N Dec. 893, *supra*; *Matter of Baires-Larios*, 24 I&N Dec. 467, *supra*. These legal decisions, however, involved only derivative citizenship claims by children born to foreign national parents who became naturalized U.S. citizens at some point after the child's birth. The cases did not pertain to, or hold, that a child born to a parent who was already a naturalized U.S. citizen was eligible to derive citizenship under former section 321(a) of the Act. The Applicant has not cited to, or provided us with any legal decisions that held that former section 321(a) of the Act provisions apply to a child born to a parent who was already a naturalized U.S. citizen.

The policy guidance referred to by the Applicant also does not state that former section 321(a) of the Act provisions apply in cases where a parent naturalized prior to the child's birth. Rather, a review of the provisions cited to in the USCIS Adjudicator's Field Manual and volume 12 of the USCIS Policy Manual; volume 7 of the Department of State Foreign Affairs Manual; and in the 1996 State Department Passport Bulletin No. 96-18, reflect that the information simply provides guidance on how to apply former section 321(a) of the Act provisions to cases arising within the framework of

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the statute (in this case, within the framework of a child born to two foreign national parents.) Accordingly, while the Applicant demonstrated that policy guidance states that a child may derive citizenship under former section 321(a) of the Act as long as all required actions took place before the child's 18th birthday, he did not show that this guidance applies to a child born to a parent who was already a naturalized U.S. citizen.

Upon review, the Applicant has not demonstrated that our finding on his previous motion to reconsider was contrary to the law and policy guidance. The legal decisions and policy guidance cited to by the Applicant reflect that it does not matter in which order former section 321(a) of the Act requirements are met, so long as the requirements are satisfied prior to the child's 18th birthday. However, the cases and policy guidance pertain only to situations in which a child is eligible to derive citizenship because she or he was born to foreign national parents, as required by the statutory terms of former section 321(a) of the Act. The evidence cited to by the Applicant does not establish that an individual born to a parent who was already a naturalized U.S. citizen is eligible to derive citizenship under former section 321(a) of the Act. Because the record shows that the Applicant was born in [REDACTED] to a foreign national mother and a naturalized U.S. citizen father, the Applicant is not eligible to derive citizenship under former section 321(a) of the Act.

### III. CONCLUSION

Upon review, the Applicant has not demonstrated that our finding on his previous motion to reconsider was contrary to law or USCIS policy, or that we erred in finding that he did not derive U.S. citizenship through his father pursuant to former section 321(a) of the Act.

**ORDER:** The motion to reconsider is denied.

Cite as *Matter of M-M-A-K-*, ID# 114369 (AAO Sept. 23, 2016)