



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

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

MATTER OF J-R-B-G-

DATE: DEC. 11, 2015

MOTION ON NEW YORK DISTRICT OFFICE DECISION

MATTER: SECTION 342 CANCELLATION: ADMINISTRATIVE CANCELLATION OF  
CERTIFICATE, DOCUMENT, OR RECORD

The Appellant seeks review of the cancellation of his Certificate of Citizenship. *See* Immigration and Nationality Act (the Act) § 342, 8 U.S.C. § 1453. The District Director, New York, New York cancelled the Appellant's Certificate of Citizenship. We dismissed an appeal of the decision, and we also dismissed two subsequent motions filed by the Appellant. The matter is again before us on a motion to reopen and a motion to reconsider. The motions will be denied.

The record reflects that the Appellant was born in the Dominican Republic on [REDACTED] to unmarried, non-U.S. citizen parents. The Appellant was admitted to the United States as a lawful permanent resident on February 15, 1978, at the age of [REDACTED]. The Appellant's father became a naturalized U.S. citizen on November 5, 1980, when the Appellant was [REDACTED] years of age. The Appellant's mother died on [REDACTED]. The Appellant claims that he derived U.S. citizenship from his father pursuant to former section 321 of the Act, 8 U.S.C. § 1432 (Repealed by Sec. 103(a), title I, Child Citizenship Act of 2000, Pub.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 record indicates that the Appellant initially filed Form N-600, Application for Certificate of Citizenship, on November 26, 2004. The application was approved and the Appellant's Certificate of Citizenship was issued on September 7, 2006. On May 27, 2010, the Director issued a notice of intent to cancel the Appellant's Certificate of Citizenship pursuant to section 342 of the Act, 8 U.S.C. § 1453. Following a response by the Appellant dated July 26, 2010, the Director cancelled the Appellant's Certificate of Citizenship on September 30, 2010.

We dismissed an appeal of the Director's decision on January 6, 2011. A motion on our dismissal of the appeal was dismissed as being untimely filed on April 25, 2012. The Appellant filed a second motion on May 24, 2012, which we dismissed on July 5, 2013. The matter is again before us on motion as the Appellant filed a third motion on August 2, 2013, which we received on January 22, 2015.

On the current motion, the Appellant contends that his motion to have the Director's decision to cancel his Certificate of Citizenship reversed should be granted, and submits a brief and additional documentation in response to our previous dismissal with an intent to clarify ambiguities pertaining

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to unpublished decisions and the opinions of foreign attorneys regarding the retroactive effect of Dominican law.

We conduct appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the motion.

Section 342 of the Act, 8 U.S.C. § 1453, provides, in relevant part, that:

The [Secretary of the Department of Homeland Security] is authorized to cancel any certificate of citizenship . . . if it shall appear to [his] satisfaction that such document or record was illegally or fraudulently obtained from, or was created through illegality or by fraud practiced upon, him or the Commissioner or a Deputy Commissioner; but the person for or to whom such document or record has been issued or made shall be given at such person's last-known place of address written notice of the intention to cancel such document or record with the reasons therefore and shall be given at least sixty days in which to show cause why such document or record should not be canceled. The cancellation under this section of any document purporting to show the citizenship status of the person to whom it was issued shall affect only the document and not the citizenship status of the person in whose name the document was issued.

As we noted in our January 6, 2011, decision, the Director properly notified the Appellant of the intent to cancel the Certificate of Citizenship and afforded him an opportunity to respond as required by the Act and the regulations.

Because the Appellant 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 Appellant'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 (Comm'r. 1989)).

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 persons who were not yet 18 years old as of February 27, 2001. The Appellant's eighteenth birthday was on [REDACTED] 1986. Because the Appellant 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).

Former section 321 of the Act, in effect at the time the Appellant became 18 years of age in [REDACTED] is therefore applicable in this case, and provided, in pertinent part, that:

(b)(6)

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- (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
  - (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.

Section 101(c) of the Act, 8 U.S.C. § 1101(c), provides, in relevant part, the following definition of child for purposes of Title III of the Act:

[A]n unmarried person under twenty-one years of age and includes a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in the United States or elsewhere, and except as otherwise provided in section 320 and 321 of the title III, a child adopted in the United States, if such legitimation or adoption takes place before the child reaches the age of 16 years . . . and the child is in the legal custody of the legitimating or adopting parent or parents at the time of such legitimation or adoption.

The Appellant was born on [REDACTED] in the Dominican Republic to unwed parents, both nationals of the Dominican Republic. The record indicates that the Appellant's father registered the Appellant's birth certificate on December 16, 1974, when the Appellant was [REDACTED] years of age. The record also indicates that the Appellant's mother died on [REDACTED]. The Appellant claimed that he derived citizenship through his U.S. citizen father because he met the requirements in former section 321(a)(2), (a)(4), and (a)(5) of the Act, as his father naturalized and his mother is deceased, the naturalization took place while he was under 18 years old, and he was residing in the United States pursuant to a lawful admission for permanent resident while under 18 years of age.

We previously found that, regardless of the requirements in former section 321(a)(2), (a)(4), and (a)(5) of the Act, the Appellant did not demonstrate that he met the definition of "child" in section 101(c) of the Act, as he had not been legitimated before he reached 16 years of age. We affirm the Appellant has still not established that he meets this requirement.

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At the time of the Appellant's birth, and the registration of his birth certificate, the law in effect in the Dominican Republic regarding legitimation was the Civil Code of the Dominican Republic, 1958, Article III, Section 1, entitled "Legitimation of Natural Children," which provided that there must be acknowledgement of the natural offspring followed by the subsequent marriage of the parents to effect legitimation. Although the Appellant's father acknowledged the Appellant on December 16, 1974, the Appellant's father never married the Appellant's mother, and the Appellant's mother died on [REDACTED]

In 1994, the Dominican Republic enacted the Code for the Protection of Children (the 1995 Code), which took effect on January 1, 1995. The 1995 Code made the rights of children born in wedlock identical to those of children born out of wedlock once parentage has been established according to the legal procedures of the Dominican Republic. At the time that the 1995 Code went into effect on January 1, 1995, the Appellant was [REDACTED] years of age.

In our decision of January 6, 2011, we concurred with the Director's decision that the Appellant was not legitimated under either the laws of the Dominican Republic or New York. With respect to the 1995 Code of the Dominican Republic, we held that the law was not retroactive, and therefore the Appellant did not meet the definition of "child" in § 101(c) of the Act, citing two precedent decisions of the Board of Immigration Appeals (the Board), *Matter of Reyes*, 17 I&N Dec. 512 (BIA 1980) and *Matter of Doble-Pena*, 13 I&N Dec. 366 (BIA 1969). As such, we concurred with the Director that the Appellant did not derive U.S. citizenship pursuant to former section 321 of the Act.

In our decision of July 5, 2013, we again cited the *Matter of Reyes* and *Matter of Doble-Pena* decisions in which the Board held that, under the laws in the Dominican Republic, the subsequent marriage of a child's parents, and acknowledgment of the child, are required for legitimation, and that Article 2 of the 1995 Code, which eliminated all legal distinctions between children born in and out of wedlock and took effect on January 1, 1995, is not retroactive. We again noted that we are bound by the precedent decisions of the Board.

In *Matter of Cabrera*, 21 I&N Dec. 589 (BIA 1996), the Board overruled *Matter of Reyes* and held that under 1995 Code, a child born out of wedlock is placed in the same legal position as one born in wedlock once parentage is established according to the legal procedures of the Dominican Republic. The Board thus held that a child residing or domiciled in the Dominican Republic may qualify as a legitimated child as defined under section 101(b)(1)(C) of the Act as soon as his father acknowledges paternity in accordance with Dominican law. We note that the child in this decision was approximately [REDACTED] years old at the time the 1995 Code was enacted.

In *Matter of Martinez*, 21 I&N Dec. 1035 (BIA 1997), the Board further addressed legitimation under the definition of "child" under section 101(b)(1)(C) of the Act. The Board held that when a country eliminates all legal distinctions between children born in wedlock and those born out of wedlock, as the Dominican Republic did with the enactment of the 1995 Code, all children born out of wedlock are deemed to be the legitimate or legitimated children of their natural fathers from the time that the country's laws are changed. The Board noted that such children may only be included

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within the definition of the term “child” provided in section 101(b)(1)(C) of the Act if the parent-child relationship is established by the requisite degree of proof and the legitimizing act occurred prior to the child’s 18th birthday, that the legitimizing act in the case of Dominican law could be either the change in the law itself or the acknowledgment of paternity, but that both events are required to accomplish legitimation, and, therefore, both events must have occurred prior to a child’s 18th birthday in order for the child to meet the requirements of section 101(b)(1)(C). Children who were acknowledged after their 18th birthday or who turned 18 prior to January 1, 1995, the effective date of the Code for the Protection of Children, and who were not legitimated under the former Dominican law, cannot meet these requirements.

Thus, in this particular case, in order to meet the definition of “child” under section 101(c) of the Act, the acknowledgement of paternity and the change of the law must occur before the child’s 16th birthday. The Appellant’s father acknowledged the Appellant when the Appellant was [redacted] years old in registering the birth certificate in 1974. However, the Appellant was [redacted] years old at the time the Dominican Republic enacted the 1995 Code. Therefore, the Appellant does not fall within the definition of the term “child” provided in section 101(b)(1)(C) of the Act, and therefore, the Appellant did not derive U.S. citizenship pursuant to former section 321 of the Act.

On motion, the Appellant contends that the legal opinions of foreign attorneys which are included in the record, and which address the issue of retroactivity of the 1995 Code, provide that the Appellant is the legitimate child of his father, and therefore qualifies for derivative citizenship pursuant to former section 321 of the Act. While we have reviewed and considered the opinions of foreign attorneys in matters involving foreign law, as stated above, we are bound by precedent of the Board, and find that the Board’s decision in *Matter of Martinez* is controlling in this case.

The Appellant also proffers on motion two decisions of the U.S. Court of Appeals for the Second Circuit which he asserts support his contention that he derived U.S. citizenship from his father.

The Appellant provides a summary order of the Second Circuit dated July 16, 2013, *Matter of Morales-Santana v. Holder*, Docket Number 11-1252-ag. The Appellant states that the Second Circuit in the summary order raises the issue whether the difference in requirements for unwed citizen mothers and citizen fathers violates the equal protection clause of the Fifth Amendment to the U.S. Constitution. We note that the Second Circuit subsequently decided this case in a published decision in 2015. See *Morales-Santana v. Lynch*, 804 F.3d 520 (2nd Cir. 2015). In the published opinion, the Second Circuit in *Morales-Santana* held that the gender-based distinction in the physical presence requirement for derivative citizenship in the Immigration Act of 1952 (in effect at the time of the petitioner’s birth) violated the Equal Protection clause of the Fifth Amendment of the U.S. Constitution. This opinion, however, is not controlling in the present matter. In the Appellant’s case, the issue is not the gender-based distinction in the physical presence requirements, but rather the legitimation requirements for children born out of wedlock to derive citizenship through their fathers.

The Appellant also cites to *Watson v. Holder*, 643 F.3d 367 (2nd Cir. 2011), a case regarding whether the petitioner had been legitimated under Jamaican law within the meaning of section

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101(c) of the Act, even though his parents never married, with the result that he had obtained derivative citizenship as a consequence of the naturalization of his father. This case involved a change in Jamaican law in 1976 regarding the legitimation of children, similar to the change in the law in the Dominican Republic which occurred in 1995. We note, however, that the petitioner in *Watson* was born *after* the enactment of Jamaica's law in 1976; whereas in this case, the Appellant was born in [REDACTED] and was over the age of 18 at the time of the Dominican Republic enacted the Code for the Protection of Children in 1995.

The burden of proof in cancellation proceedings is on the government, and cancellation of a certificate of citizenship is authorized "if it shall appear to the [Secretary of Homeland Security's] satisfaction that such document . . . was illegally or fraudulently obtained. . . ." We find that the Director has met this burden of proof and that the Appellant's certificate of citizenship was properly cancelled. The Appellant's motions are denied.

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

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

Cite as *Matter of J-R-B-G-*, ID# 12447 (AAO Dec. 11, 2015)