



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

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

In Re: 23378373

Date: DEC. 16, 2022

Appeal of New York, New York Field Office Decision

Form N-600, Application for a Certificate of Citizenship

The Applicant seeks a Certificate of Citizenship to reflect that he derived U.S. citizenship from his mother under former section 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432.

The Director of the New York, New York Field Office denied the Form N-600, Application for a Certificate of Citizenship (Form N-600), concluding that the Applicant was not eligible for a Certificate of Citizenship under former section 321(a) of the Act as a child born out of wedlock because he had been legitimated by his father under Honduran law. The Director also concluded that the Applicant was not eligible under current section 320 of the Act, 8 U.S.C. § 1341, because he was not under the age of 18 years on the effective date of that provision. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will withdraw the Director's decision and remand the matter for a new decision consistent with the following analysis.

The record reflects that the Applicant was born in Honduras in [redacted] 1978 to unmarried foreign national parents. The Applicant stated on the Form N-600 that his parents subsequently married. The record shows that the Applicant entered the United States as a lawful permanent resident in January 1988. He submitted a [redacted] New York divorce decree showing that his parents divorced in 1989 and that custody of the Applicant was awarded to his mother. A Certificate of Naturalization shows that the Applicant's mother subsequently naturalized in October 1995, when the Applicant was 16 years old. As there is no evidence that the Applicant's father is a U.S. citizen, the Applicant seeks a Certificate of Citizenship solely through his naturalized U.S. citizen mother.

The Director denied the Form N-600, finding that the Applicant had been legitimated by his father under Honduran law and therefore was not eligible for a Certificate of Citizenship through his mother based on the out-of-wedlock without legitimation conditions at former section 321(a)(3) of the Act.

On appeal, the Applicant does not dispute the Director's conclusions that: (1) current section 320 of the Act conditions are not applicable to the facts of his case;¹ and (2) he was legitimated by his father under Honduran law and therefore has not satisfied the out-of-wedlock without legitimation conditions at former section 321(a)(3) of the Act. Instead, the Applicant contends that he has satisfied former section 321(a)(3) of the Act conditions relating to the naturalization of a parent having legal custody of a child when there has been a legal separation of the parents, and that the Director erred in not considering the Applicant's eligibility under these conditions.

Generally, former section 321 of the Act conditions apply to an individual born outside of the United States claiming automatic U.S. citizenship after birth and who can meet the last of certain conditions between December 24, 1952 and February 26, 2001. For individuals born to foreign national parents, only one of whom naturalized before the individual turned 18, the individual may automatically become a U.S. citizen if, among other requirements, one of three conditions are met: (1) the non-naturalized parent is deceased; (2) the U.S. citizen parent has custody over the individual after a legal separation or divorce; or (3) the individual was born to unmarried parents and is claiming to be a U.S. citizen through a naturalized mother, and the father has not legitimated the individual.

On appeal, the Applicant submits new evidence that includes court documents showing his parents divorced in New York in 1989, and that his mother was awarded legal custody of the Applicant. Because the Director did not consider whether the Applicant automatically derived U.S. citizenship through his mother under the legal custody after a legal separation or divorce conditions at former section 321(a)(3) of the Act and has not had an opportunity to consider this new evidence of the Applicant's eligibility under these conditions, we are returning the matter to the Director to determine whether or not the Applicant has satisfied those requirements and, if so, whether he then satisfies all of the remaining conditions at sections former section 321 of the Act.

ORDER: The Director's decision is withdrawn. The matter is remanded for entry of a new decision consistent with the foregoing analysis.

¹ 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 former sections 320 and 322 of the Act, and repealed former section 321 of the Act. The provisions of the CCA are not retroactive, and the amended provisions 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 in February 2001, he is not eligible for the benefits of the amended Act. See *Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001).