



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

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

In Re: 23135609

Date: NOV. 8, 2022

Motion on Administrative Appeals Office Decision

Form N-600, Application for a Certificate of Citizenship

The Applicant, who was born abroad in 1976, seeks a Certificate of Citizenship to reflect that he derived U.S. citizenship from his father under former section 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432.¹ To establish derivative citizenship under former section 321 of the Act, an individual who was born abroad between December 24, 1952, and February 27, 1983, must show that he or she was residing in the United States as a lawful permanent resident and that both parents became naturalized U.S. citizens before the individual turned 18 years of age. If only one parent naturalized before the individual's 18th birthday, the individual must satisfy one of the conditions in former section 321(a)(2)-(3) of the Act in addition to the age and lawful permanent residence requirements.

The Director of the Charlotte, North Carolina Field Office denied the Form N-600, concluding that the Applicant did not establish derivative citizenship under former section 321 of the Act because only his father naturalized as a U.S. citizen and his parents were never married.² We summarily dismissed a subsequent appeal pursuant to the regulations at 8 C.F.R. §103.3(a)(1)(v), because the Applicant did not specifically identify any erroneous conclusion of law or statement of fact in the Director's decision and, although he indicated that he would submit a brief and/or additional evidence to our office within 30 days he did not do so. We further noted that even if we were not summarily dismissing the appeal, the record reflected that the Applicant was ineligible for a Certificate of Citizenship on the grounds identified by the Director.

The matter is now before us on a combined motion to reopen and reconsider. The Applicant submits additional evidence and reasserts that he derived U.S. citizenship from his father under former section 321(a)(3) of the Act because he was residing in the United States in his father's legal custody before turning 18 years of age. He avers that he therefore satisfied the relevant conditions for derivative citizenship, and requests us to reopen and reconsider our prior adverse decision.

¹ Repealed by Sec. 103(a), title I, Child Citizenship Act of 2000 (CCA), Pub. L. No. 106-395, 114 Stat. 1631 (2000).

² The Director also determined that the Applicant was not eligible to derive U.S. citizenship under current section 320 of the Act, 8 U.S.C. § 1432, because he was over 18 years of age when that section went into effect on February 27, 2000. The Applicant does not contest that determination. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001) (Current section 320 of the Act applies only to individuals who were not yet 18 years old as of February 27, 2001, its effective date.

Upon review, we will dismiss the motion to reopen and reconsider.

I. LAW

A motion to reopen is based on documentary evidence of new facts, and a motion to reconsider must show that our decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services' (USCIS) policy to the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(2)-(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit; however, a motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

II. ANALYSIS

As a preliminary matter, review of this motion is limited to the basis for the prior adverse decision. Accordingly, we examine any new facts and arguments to the extent that they pertain to our summary dismissal of the Applicant's appeal.

A. Grounds for Summary Dismissal Not Overcome

The Applicant does not claim that the summary dismissal of his appeal was based on incorrect application of law or USCIS policy, or that there are new facts that warrant reopening of that decision. Nor does he claim that he submitted a supporting brief or evidence in support of his prior appeal. Consequently, he has not overcome the grounds for the summary dismissal of his appeal.

B. Derivative Citizenship under Former Section 321 of the Act Not Established

Furthermore, the additional evidence the Applicant submits is insufficient to establish his derivative citizenship claim. The record reflects that the Applicant was born in Nigeria in 1976 and is claiming derivative citizenship under former section 321 of the Act, which was in effect at the time he was born and when he turned 18 years of age in 1994, and which provided in relevant part that:

(a) A child born outside of the United States of alien parents . . . 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.

(Emphasis added).

The Applicant avers that he was eligible to derive citizenship under the first clause of former section 321(a)(3) of the Act³ because he was residing in the United States as a lawful permanent resident in his U.S. citizen father's legal custody. In support, he submits an affidavit from his mother attesting that she gave custody to his father in 1989, and evidence that he resided with his father during the relevant period before he turned 18 years of age.

We acknowledge the submission of this additional evidence concerning the father's custody. However, former section 321(a)(3) of the Act specifically requires the Applicant to establish not only that his father had legal custody, but also that his parents were "legally separated."

The term "legal separation" in the context of derivative citizenship means either a limited or absolute divorce obtained through judicial proceedings. *Matter of H*, 3 I&N Dec. 742 (BIA 1949). A child whose parents were never married cannot derive citizenship under former section 321(a)(3) of the Act. *Id.* at 744 (explaining that "[s]ince the subject's parents were not lawfully joined in wedlock, they could not have been legally separated"); *see also Levy v. U.S. Attorney General*, 882 F.3d 1364, 1368 (11th Cir. 2018) (holding that for purposes of former section 321 of the Act "[l]egal separation is a bright line marking the disunion of a married couple . . .").

Here, the Applicant confirms that his parents were never married to each other. As such, they could not have been legally separated within the meaning of former section 321(a)(3) of the Act. The Applicant therefore has not established that there was a "legal separation" of his parents, a threshold requirement for him to derive citizenship solely from his father under the first clause of former section 321(a)(3) of the Act. Because the Applicant is ineligible to derive U.S. citizenship from his father on that basis alone, we need not address whether the additional evidence he submits is sufficient to establish that his father met the "legal custody" condition under the same section.⁴

³ The Applicant does not claim derivative citizenship under former section 321(a)(1) or (2) of the Act, and there is no evidence that his mother became a naturalized U.S. citizen or died before the Applicant's 18th birthday, as required under those sections. Nor does he claim eligibility to derive citizenship under the second clause of former section 321(a)(3) of the Act as his mother's out of wedlock child whose paternity had not been established by legitimation.

⁴ Instead, we reserve the issue. Our reservation is not a stipulation that the Applicant would meet the legal custody condition had he been able to establish legal separation of his parents, and should not be construed as such. Rather, as the Applicant has not established the prerequisite legal separation of parents there is no constructive purpose to addressing his father's custody, because it would not change the outcome of the appeal.

III. CONCLUSION

The Applicant has not shown that we erred as a matter of law or USCIS policy in summarily dismissing his appeal, nor has he established new facts relevant to the summary dismissal that would warrant reopening of these proceedings. Consequently, we have no basis for reopening or reconsideration of our appellate decision. Furthermore, the additional evidence the Applicant submits on motion does not establish that he meets the relevant conditions for derivative citizenship under former section 321 of the Act. The Applicant's prior appeal therefore remains dismissed, and his underlying request for a Certificate of Citizenship remains denied.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.