



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

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

In Re: 23888377

Date: FEB. 21, 2023

Motion on Administrative Appeals Office Decision

Form N-600, Application for a Certificate of Citizenship

The Applicant who was born abroad in 1980 seeks a Certificate of Citizenship to reflect that he derived U.S. citizenship at birth from his mother under former section 321(a)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432(a)(3), as her out-of-wedlock child whose paternity has not been established by legitimation, or in the alternative under former section 321(a)(2) of the Act based on a claim that his father was deceased when his mother naturalized as a U.S. citizen in 1994.

The case has a long procedural history. The Director of the Boston, Massachusetts Field Office initially denied the application in September 2009, concluding that the Applicant did not establish he derived citizenship from his mother because the record reflected he had been legitimated by his father. The Applicant then filed an appeal and several motions which have been either rejected or dismissed. The Director of the Providence, Rhode Island Filed Office dismissed the Applicant's most recent motion, finding that the evidence was insufficient to show that his father was deceased in view of the inconsistent documentation in the record. We dismissed the Applicant's appeal on the same grounds. We also rejected the Applicant's subsequent appeal of that decision, explaining that we do not have jurisdiction over appeals of our own decisions. The matter is now before us on a combined motion to reopen and reconsider the rejected appeal.

The Applicant submits a new birth certificate accompanied by a letter from a registrar of births and deaths in Ghana. He repeats his previous claim that he was never legitimated in Ghana by his father, because his father died in 1979.

Upon review, we will dismiss the motions.

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 the instant motions is limited to the basis for the prior decision. Accordingly, we first examine any new facts and arguments to the extent that they pertain to our rejection of the Applicant's appeal.

A. Grounds for Rejection of the Appeal Not Overcome

The Applicant does not claim that we incorrectly applied the law or USCIS policy in rejecting his appeal, or that there are new facts that would warrant reopening of that decision. Furthermore, when we reject an appeal, the appeal does not retain a filing date and there is no merits-based decision for us to review on motion. 8 C.F.R. § 103.2(a)(7)(ii). Consequently, we must dismiss the Applicant's motion to reopen and reconsider our rejection of his appeal.

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

Furthermore, the new evidence concerning the substance of the Applicant's citizenship claim is insufficient to establish that he derived U.S. citizenship from his mother. As previously discussed, the record contains the Applicant's 1986 birth certificate, which reflects that his father registered the birth before a registrar in [redacted] Ghana in [redacted] 1986. In addition the record includes a letter from the registrar of births and deaths in [redacted] Ghana confirming that this birth certificate is a genuine document in response to a U.S. Consular's Officer request for authentication. As explained in our prior decisions, the Applicant's birth certificate not only is evidence that the Applicant's father was alive as of January 1986, but it also shows that the Applicant's paternity was established by legitimation under Ghanaian law in effect at the time. We acknowledge the submission of the new birth certificate issued in June 2022 by a registrar in [redacted] Ghana, which reflects that the Applicant's mother (and not his father) registered the Applicant's birth in October 2009. A delayed birth certificate, however, does not have the same evidentiary weight as one issued contemporaneously with the actual event, and must instead be evaluated in light of the other evidence of record and the circumstances of the case. *Matter of Bueno-Almonte*, 21 I&N Dec. 1029, 1033 (BIA 1997).

Here, the 1986 birth certificate, which the Applicant's mother submitted to the U.S. Embassy in [redacted] Ghana in support of his immigrant visa application when he was six years old was authenticated by the Ghanaian civil authorities before the Applicant immigrated to the United States. The new birth certificate, issued in 2022 reflects that the Applicant's mother reported his birth before a different registry office in October 2009, when the Applicant was 29 years old, and after his citizenship claim had been denied upon determination that the information in the 1986 birth certificate indicated he was legitimated by his father. The Applicant does not explain why his mother registered his birth in [redacted] [redacted] Ghana rather than requesting a correction to the 1986 certificate registered in [redacted] Ghana. Moreover, while in his motion brief the Applicant refers to the 2022 letter from the registrar of births and deaths in [redacted] Ghana as a "declaration of authenticity" of his birth certificate issued in 2022, the letter states only that the birth certificate "registered at [redacted] Registry . . . [in October 2009] . . . has been duly processed and entered in the Register of Births"; it does not contain any information concerning the birth certificate's authenticity, nor does it reference the record of the Applicant's 1986 birth registration. The new evidence therefore does not establish that that the Applicant's 1986 birth certificate is not genuine or that it is otherwise not valid or contains incorrect information about his

paternity and the circumstances of his birth registration. The Applicant therefore has not established new facts that would warrant reopening of his citizenship proceedings.

Regarding his motion to reconsider, the Applicant does not identify any specific legal or policy errors in our previous determination that his paternity was established by legitimation in Ghana. Rather, he indicates generally that under Ghanaian law his parents were required to marry to legitimate him. In support, he references section 81 of the Marriages Act, 1884-1985 CAP 127 (the Marriages Act). We note, however, that the Marriages Act encompasses a period of over 100 years and the Applicant does not provide evidence to show that this specific legitimation provision that was in effect during the relevant period of time from his 1980 birth until his 18th birthday in 1998. The application of the foreign law is a question of fact which must be proved by an applicant if they are relying on that law to establish eligibility for an immigration benefit. See *Matter of Kodwo*, 24 I&N Dec. 479, 482 (BIA 2008); *Matter of Annang*, 14 I&N Dec. 502, 503 (BIA 1973); *Matter of Kodwo*, 24 I&N Dec. 479 (BIA 2008).

We acknowledge that section 81(1) of the Marriages Act the Applicant cites in his brief, which appears to have been in effect as of 1885,¹ states that “[a] child born before the intermarriage of the parents under this Part . . . shall on the intermarriage become the lawful issue of a marriage under this Part and is entitled to the same rights and privileges.” However section 81 further provides that it “applies to all children both of whose parents were living on the 15th day of February, 1909[],” and the Applicant and his parents were born after that date. Accordingly, the Applicant has not shown that this provision applies in his case. Furthermore, according to a 1994 Law Library of Congress Opinion, *Children Born out of Wedlock and Legitimation Laws in Ghana*, “[t]he concept of illegitimacy and its social and legal consequences are foreign to Ghanaian customs and traditions . . . [a]nd every child is legitimate whether the parents are married or not.” (citing Sbenezer Osei-Kofi, *Marriage and the Family* 5:21 (Gothenburg, 1974)). Thus, while we recognize that past Ghanaian law may have provided for legitimation of children born to unmarried parents, the Applicant has not shown that such law was in effect at the time he was born and before he turned 18 years old in 1998. Thus, he has not demonstrated that we erred as a matter of law or USCIS policy in concluding that he did not establish eligibility for derivative citizenship under former section 321(a)(3) of the Act as his mother’s out-of-wedlock child who had not been legitimated. Nor has the Applicant shown that this determination was otherwise incorrect based on the evidence in the record of proceedings at the time.

In conclusion, the Applicant has not established a sufficient basis for us to reopen his citizenship proceedings and/or to reconsider our prior determination of his ineligibility for a Certificate of Citizenship under former section 321 of the Act. The Applicant’s Form N-600 therefore remains denied.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

¹ See *Ghana: Marriages Act, 1884 – 1985 CAP. 127* [Ghana], 1885, available at: <https://www.refworld.org/docid/548edd8f4.html> [accessed 8 February 2023].

ATTACHMENT: 1994 Law Library of Congress Opinion, *Children Born out of Wedlock and Legitimation Laws in Ghana*.

CHILDREN BORN OUT OF WEDLOCK AND LEGITIMATION LAWS IN GHANA

The concept of illegitimacy and its social and legal consequences are foreign to Ghanaian customs and traditions. Every child is legitimate whether the parents are married or not. The children of unmarried parents suffer no social or legal disabilities even in cases where paternity is not known or accepted.¹

Under law "the birth of every child in any district...shall be registered by the Registrar in the district in which the child was born." The father and the mother of the child are under duty to register their child.² Where the paternity of a child is in doubt "the Registrar shall not enter the name of any person as father of the child except at the joint request of the mother and the person acknowledging himself to be the father of the child, and that person shall in that case sign the register together with the mother." Acknowledgement of paternity does not constitute or reflect marriage between the parents.

Naming of a child is a right of the father, being married to the mother or not. A well known scholar wrote "[a] child receives its name from its father or the head of the father's family, eight days after its birth..."³

In the present case the copy of the entry in register of births shows Mr. [REDACTED] as the father of [REDACTED]. There is no indication he had married the infant's mother. The agreement registered between both parents on February 28 in the family tribunal Accra Central shows that the parties consented that custody of the child would be granted to the father. Under these circumstances, if the documents are indeed authenticated, it seems Mr. [REDACTED] has indeed custody of his daughter.

[REDACTED]
Law Library of Congress
June 3, 1994

¹ Sbenezer Osei-Kofi, *Marriage and the Family* 5:21 (Gothenburg, 1974).

² The Registration of Births and Deaths Act, 1965, article 8, 5 Acts of Ghana (1960).

³ J.M. Sarbah, *Fanti Customary Laws* 54 (1968).