U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

DATE: DEC 2 0 2013 OFFICE: HOUSTON, TX [redacted]

IN RE: [redacted]

APPLICATION: Application for Certificate of Citizenship under Section 320 of the Immigration and Nationality Act; 8 U.S.C. § 1431

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Form N-600, Application for Certificate of Citizenship (Form N-600) was denied by the Field Office Director, Houston, Texas (the director), and the matter is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded to the director for further proceedings consistent with this decision and entry of a new decision.

The applicant was born in Venezuela on September 27, 1985. At the time of his birth, the applicant's mother, was wed to one The original registration of the applicant's birth, however, did not identify a father. The parties divorced in 1992. The applicant's mother wed U.S. citizen in Venezuela on August 13, 2001.

The applicant was admitted into the United States as a lawful permanent resident on May 12, 2003, when he was 17 years old.[1] His mother became a naturalized U.S. citizen on September 20, 2006, when the applicant was 20 years old. The applicant seeks a certificate of citizenship, asserting that he derived U.S. citizenship through his father, pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The record reflects that the applicant filed a Form N-600 on September 9, 2003. The director denied the application on December 28, 2004, finding that the applicant failed to establish that he derived U.S. citizenship through either parent. Specifically, the director stated that discrepancies in information provided in previous applications, as well as statements made by the applicant's mother, undermined the applicant's credibility. For example, filed a Form N-643 requesting a certificate of citizenship on behalf of an adopted child. Subsequently, the applicant indicated on two Form N-600s that he had not been adopted. Further, the director stated that the applicant's mother had testified that was not the applicant's biological father.

The applicant filed a second Form N-600 on October 2, 2012. The director denied the application on May 8, 2013, on the same grounds stated in the applicant's December 2004 denial decision.[2] The applicant has appealed from the director's May 2013 denial.

On appeal, the applicant asserts that the record contains no evidence that the applicant's mother ever stated that is the applicant's stepfather, adding that under Venezuelan law, the applicant's parents' marriage certificate and the applicant's amended birth certificate both state that the applicant is the biological son of legitimated and recognized his paternity of the applicant in 2001. The applicant claims that he therefore meets the requirements for U.S. derivative citizenship under section 320 of the Act.

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

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filed a Form I-130 petition on the beneficiary's behalf, which was granted. indicated that the applicant was his child on the Form I-130.

[2] The record also contains a Form N-643, Application for a Certificate of Citizenship on Behalf of Adopted Child filed by on behalf of the applicant, June 13, 2003. The application was denied on September 4, 2003 for lack of evidence that had legally adopted the applicant.

Former section 320 of the Act was amended by the Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631 (CCA), and took effect on February 27, 2001. The CCA benefits all persons who did not reach their eighteenth birthday as of February 27, 2001. The applicant was 15 years old on February 27, 2001. Because the applicant was not yet 18 on the effective date of the CCA, its amendments to section 320 of the Act apply to his citizenship claim. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153, 156 (BIA 2001) (en banc).

Section 320(a) of the Act provides that:

> A child born outside of the United States automatically becomes a citizen of the United States when all of the following conditions have been fulfilled:
>
> (1) At least one parent of the child is a citizen of the United States, whether by birth or naturalization.
>
> (2) The child is under the age of eighteen years.
>
> (3) The child is residing in the United States in the legal and physical custody of the citizen parent pursuant to a lawful admission for permanent residence.

Section 101(c) of the Act, 8 U.S.C. § 1101(c)(1) provides, in pertinent part, that for naturalization and citizenship purposes, the term "child" means:

> an 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 . . . if such legitimation . . . takes place before the child reaches the age of 16 years . . . and the child is in the legal custody of the legitimating . . . parent or parents at the time of such legitimation . . . .

Section 320(b) of the Act applies to adopted children, and provides that:

> Subsection (a) shall apply to a child adopted by a United States citizen parent if the child satisfies the requirements applicable to adopted children under section 101(b)(1).

Under section 101(b)(1)(E) of the Act, 8 U.S.C. § 1101(b)(1)(E), the term "child" is defined, in pertinent part, as an unmarried person under twenty-one years of age who is:

> [A] child adopted while under the age of sixteen years if the child has been in the legal custody of, and has resided with, the adopting parent or parents for at least two years[.]

An individual may not derive U.S. citizenship through a non-adoptive stepparent. *Matter of Guzman-Gomez*, 24 I&N Dec. 824, 829 (BIA 2009).

Because the applicant was born abroad, he is presumed to be an alien 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). *See also,* 8 C.F.R. § 341.2(c) (the burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence.) The "preponderance of the evidence" standard requires that the record demonstrate that the applicant's claim is "probably true," based on the specific facts of each case. *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)). Even where some doubt remains, an applicant will meet this standard if she or he submits relevant, probative and credible evidence that the claim is "more likely than not" or "probably" true. *Id.* (citing *INS v. Cardoza-Fonseca,* 480 U.S. 421, 431 (1987)).

The applicant does not claim to have been adopted by a U.S. citizen parent. To the contrary, he claims [redacted] is his biological father. In this regard, the applicant has submitted a marriage certificate reflecting that [redacted] and the applicant's mother were married in Venezuela on August 13, 2001, and that at the time of their marriage they jointly recognized the applicant as their child, "procreated during their union of cohabitation." The applicant's Venezuelan birth certificate reflects that the applicant was born on September 27, 1985, and that his mother initially registered his birth before the Civil Registry on January 24, 1986. This certificate contains a subsequent notation, dated September 7, 2001, stating that the applicant was legitimated by his mother and [redacted] by means of their August 13, 2001 marriage. Although the applicant does not claim he was adopted, [redacted] filed a Form N-643 on the applicant's behalf, requesting a citizenship certificate on behalf of an adopted child. The application was denied on September 4, 2003.

The applicant's Form N-600 that he filed on October 2, 2012, lists [redacted] as the applicant's father, and responds "no" to question number, 7, Part 2, which asks whether the applicant was adopted. The earlier Form N-600 that the applicant filed on September 9, 2003, also lists [redacted] as the applicant's father and again states "no" in response to question "G," Part 2, which asks whether the applicant was adopted. Both Form N-600 applications also respond "no" to a question asking whether the applicant previously applied for a Certificate of Citizenship (see question number 6, Part 2 on Form N-600 filed October 2, 2012, and question "F" on Form N-600 filed September 9, 2003.

The record also contains a Library of Congress (LOC) opinion dated December 11, 2003, stating, in pertinent part, that under Venezuelan law, legitimation of a biological child: "[M]ay be performed either in the birth record or a special document recorded thereafter before the Civil Registry; in the marriage record of the parents; or in any other authentic or public document produced to that effect at any time." *See* LOC 2004-240, dated December 11, 2003. (Referring to articles 217.1 through 217.3 of the Venezuelan Civil Code (2002)). The LOC opinion reflects further that under Venezuelan law, formal declarations of recognition recorded in the Civil Registry are public documents that are presumed to be authentic until successfully rebutted before a court. *Id.* The LOC opinion also clarifies that adoption and recognition of biological children are conceptually different, and are governed by different legal provisions in Venezuela:

> Adoption is a legal institution through which an individual or a married couple who have complied with a number of legal requirements take as their own, a child born of other parents, give the child their name and inheritance rights, and exercise parental authority thereto. Adoption is governed by a specific set of substantive and procedural rules established in the Civil Code[.]

See LOC 2004-240. (Referring to articles 246 through 260 of the Venezuelan Civil Code).

The record also includes a June 15, 2011 immigration judge decision terminating removal proceedings against the applicant on the basis that the applicant's birth certificate established *prima facie* evidence that the applicant is the biological child of [redacted] the evidence was unrebutted; and the applicant established a *prima facie* claim of derivative U.S. citizenship under section 320 of the Act.

The immigration judge's termination of the applicant's removal proceedings is not determinative of the issue of the applicant's citizenship. The question before the immigration judge was whether the government had established the applicant's alienage by clear and convincing evidence. *See* 8 C.F.R. § 1240.8(a) and (c) (prescribing that the government bears the burden of proof to establish alienage and removability or deportability by clear and convincing evidence). While the government bears the burden of proof to establish an individual's alienage in removal proceedings before EOIR, in certificate of citizenship proceedings before USCIS, the applicant bears the burden of proof to establish the claimed citizenship by a preponderance of the evidence. Section 341(a) of the Act, 8 U.S.C. § 1452(a); 8 C.F.R. § 341.2(c). USCIS retains sole jurisdiction to issue a certificate of citizenship and the agency's decision is reviewable only by the federal courts, not EOIR. Sections 341(a) and 360 of the Act, 8 U.S.C. §§ 1452(a), 1503. The questions before the two agencies are accordingly different ones, and the burden remains with the applicant in this case to establish his citizenship by a preponderance of the evidence.

We find, upon review of the totality of the evidence, that the applicant has failed to establish that he is the biological child of [redacted], or that he has derived U.S. citizenship through [redacted] pursuant to section 320 of the Act.

The amended paternity information contained in the applicant's birth certificate is similar to issuance of a delayed birth certificate. The same evidentiary weight does not attach to a delayed birth certificate, as would attach to one contemporaneous with the actual event. *Matter of Lugo-Guadiana*, 12 I&N Dec. 726, 729 (BIA 1968). A delayed certificate must be evaluated in light of other evidence in the record and in light of the circumstances of the case. *Matter of Bueno-Almonte,* 21 I&N Dec. 1029, 1033 (BIA 1997). The evidentiary value given to a delayed birth certificate is rebutted by contradictory evidence, and each case must be decided on its own facts with regard to the sufficiency of the evidence presented as to the petitioner's birthplace. *Matter of Serna,* 16 I&N Dec. 643 (BIA 1978).

The applicant's birth certificate, as initially registered by his mother on January 24, 1986, four months after the applicant's birth, contains no paternity information for the applicant. Paternity

information for the applicant was added to the birth certificate 15 years after the applicant's birth, based solely on declarations made by the applicant's mother and when they married. The record contains no other evidence to corroborate or establish that the applicant is the biological son of Furthermore, additional evidence in the record contains material discrepancies with regard to paternal relationship to the applicant.

The record contains a Form N-643, Certificate of Citizenship on Behalf of Adopted Child (Form N-643) application, prepared and signed by on May 19, 2003, and filed on June 13, 2003. Part B of the Form N-643 application refers to, "Information about the Adoptive Parents" and states that, "if there is only one parent write "None" in place of the name of the parent which does not apply." states, in response to Part B questions about adoptive father information, that he is the applicant's adoptive father. In response to Part B questions about adoptive mother information, ndicates that the applicant's mother is a natural parent by stating "none." Furthermore, responds to Form N-643 questions about the date and place of the applicant's adoption, with the response that the applicant was adopted in on August 13, 2001, and that he and the applicant's mother were married in Venezuela on August 13, 2001. The record reflects that on September 4, 2003, the director of the Houston, Texas field office denied the applicant's Form N-643 on the basis that the applicant failed to establish he was adopted by

The applicant does not adequately address or explain the inconsistencies between the paternity claims made in his Form N-643, and the claims made on his subsequent Form N-600s, and the evidence in the record does not overcome the material discrepancies in the evidence.

A review of the record reflects that it does not include evidence of the applicant's mother's statement to immigration officers that is not the applicant's biological father. We are unable to make a final decision on the applicant's citizenship application prior to providing the applicant an opportunity to rebut unexplained, material inconsistencies in the record relating to whether or not is the applicant's biological father. Accordingly, the director's decision will be withdrawn and the matter remanded to the director for entry of a new decision. Upon remand, the director must provide the applicant with an opportunity to submit evidence that he satisfies the requirements of section 320 of the Act before entering a new decision into the record. The applicant may submit any available relevant evidence with regard to his citizenship claim, including the option of submitting DNA evidence from an accredited approved laboratory. If the applicant is found to be ineligible for citizenship under section 320 of the Act, the director shall certify the decision to the AAO for review.

ORDER: The matter is remanded to the director for further proceedings consistent with this decision and entry of a new decision which, if adverse to the applicant, shall be certified to the AAO for review.