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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536



FILE: [Redacted]

Office: Philadelphia

Date: 10 6 SEP 2001

IN RE: Applicant: [Redacted]

APPLICATION: Application for Certificate of Citizenship under Section 321 of the Immigration and Nationality Act, 8 U.S.C. 1432

IN BEHALF OF APPLICANT: Self-represented

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Robert P. Wiemann, Acting Director  
Administrative Appeals Office

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

**DISCUSSION:** The application was denied by the Acting District Director, Philadelphia, Pennsylvania, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on July 11, 1966, in Ecuador. The applicant's father, [REDACTED] was born in Ecuador in June 1935 and became a naturalized U.S. citizen on September 21, 1976. The applicant's mother, [REDACTED], was born in 1935 in Ecuador and never became a United States citizen. The applicant's parents never married each other.

The record contains an October 31, 1978, decision by the Board of Immigration Appeals affirming the district director's decision to deny a petition for alien relative filed by Jaime Yepez in the applicant's behalf because the applicant was born out of wedlock and was never legitimated by his father, Jaime Yepez. The Board revisited the issue of legitimate and illegitimate children born in Ecuador based on the reinstatement of that issue under the Civil Code of Ecuador by Supreme Decree 180 that there is no distinction between legitimate and illegitimate children. In Matter of Campuzano, 18 I&N Dec. 390 (BIA 1983), the Board held that a child who was born in Ecuador on or after August 7, 1970, or who was under 18 years of age on that date and who was acknowledged prior to his 18th birthday may be included within the definition of a legitimate or legitimated "child" as set forth in section 101(b)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(b)(1). The applicant was 14 years of age on August 7, 1970.

The applicant became the beneficiary of an approved petition for alien relative on May 14, 1980, which was filed by his step-mother, and he was lawfully admitted for permanent residence on July 17, 1980. The applicant claims eligibility for a certificate of citizenship under section 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1432.

The acting district director determined the record failed to establish that the applicant met the requirements in that he failed to establish that there had been a legal separation of his parents. The district director then denied the application accordingly.

On appeal, the applicant states that the Service made an error in not considering the application under the newly enacted section 320 of the Act, 8 U.S.C. 8 U.S.C. 1431.

In Matter of Rodriguez-Tejedor, 23 I&N Dec. 153 (BIA 2001), the Board held that the automatic citizenship provisions of section 320 of the Act, as amended by the Child Citizenship Act of 2000, Pub.L. No. 106-395, 114 Stat. 1632 (CCA), are not retroactive and, consequently, do not apply to an individual who resided in the United States with his United States citizen parents as a lawful permanent resident while under the age of 18 years, but who was

over the age of 18 years on the CCA effective date. The applicant was 34 years of age on February 27, 2001.

On appeal, the applicant disagrees with the decision and states that he was in his father's legal custody at the age of 14.

Section 321 of the Act was repealed by the Child Citizenship Act of 2000, Pub.L. No. 106-395, 114 Stat. 1631 (CCA), effective February 27, 2001. This application was filed in March 2001, after section 321 of the Act had already been repealed.

Section 321 of the Act, previously in effect, provided that:

(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.

In Matter of Fuentes-Martinez, 21 I&N Dec. 893 (BIA 1997), the Board stated the following: "Through subsequent discussions, [the interested agencies] have agreed on what we believe to be a more judicious interpretation of section 321(a). We now hold that, as long as all the conditions specified in section 321(a) are satisfied before the minor's 18th birthday, the order in which they occur is irrelevant."

The record establishes that (1) the applicant's father became a naturalized U.S. citizen prior to his 18th birthday, (2) the applicant was considered to have been acknowledged by his father

pursuant to Matter of Campuzano, supra, shortly after his birth, and (3) he was residing in the United States in his father's legal custody as a lawful permanent resident when his father naturalized.

However, in order for the applicant to receive the benefits of former section 321 of the Act, there must have been a legal separation of the parents. Matter of H--, 3 I&N Dec. 742 (C.O. 1949), held that the term "legal separation" means either a limited or absolute divorce obtained through judicial proceedings, and where the actual parents of the child were never lawfully married, there could be no "legal separation," of such parents. Therefore, the applicant's father was not legally separated from the applicant's mother when her father naturalized. If the parents were never lawfully married, there can be no legal separation, as such, and an award of custody to a naturalized parent under such circumstances does not result in derivation even though other requisite conditions are satisfied. See INTERP 320.1(a)(6).

There is no provision under the law by which the applicant could have automatically acquired U.S. citizenship through his father's naturalization. Therefore, the district director's decision will be affirmed. This decision is without prejudice to the applicant seeking U.S. citizenship through normal naturalization procedures.

**ORDER:** The appeal is dismissed.