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U.S. Department of Justice
Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
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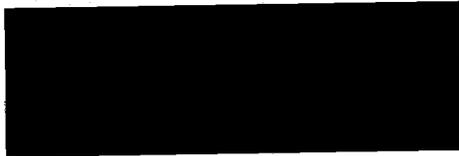
FILE: [Redacted] Office: BALTIMORE

Date: FEB 28 2003

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:



**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Baltimore, Maryland and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on July 31, 1976, in Ethiopia. The applicant's father, [REDACTED], was born in Ethiopia in September 1937 and never had a claim to U.S. citizenship. The applicant's mother, [REDACTED] was born in March 1947 in Ethiopia and became a naturalized U.S. citizen on April 15, 1994, when the applicant was 17 years and 9 months old. The applicant's parents married each other on April 3, 1979. The applicant's parents have never legally divorced or separated, but have been living apart since 1987. The applicant seeks a certificate of citizenship under section 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432.

The district director determined that the applicant failed to establish that his mother was granted sole legal custody of the applicant, nor was there any indication that his father gave up his custody rights. He denied the application accordingly.

On appeal, counsel asserts that under Maryland state law, one parent becomes the sole legal guardian of a minor child if the other parent dies, abandons the family or is incapable of acting as a parent. She further notes that the applicant is eligible under former section 322 because he was under the age of 18 at the time his mother naturalized.

It is noted that counsel, as well as the district director, examined the applicant's eligibility under former sections 320 and 322 of the Act. Former section 320 required that one of the applicant's parents be a U.S. citizen at the time of the applicant's birth. Former section 322 required that the applicant be under the age of 18 at the time of application and at the time of admission to citizenship. Unlike children who acquire citizenship through a citizen parent as of the date of their birth, children who are expeditiously naturalized under section 322 of the Act, based on their parent's or grandparent's residence, become citizens upon approval of the application and subscribing to the oath of allegiance.

The applicant in the present case does not fit the criteria for either section 320 or 322 as neither of his parents was a citizen at the time of his birth, and he was over the age of 18 when he applied for his certificate of citizenship. Further, the applicant is not eligible for consideration under the Child Citizenship Act (CCA) of 2000, Pub.L. 106-395, as he was over the age of 18 on February 27, 2001, the date of the enactment of the CCA. The AAO will examine his eligibility under former section 321 of the Act.

Section 321 of the Act was repealed on February 27, 2001. However, as noted in the publication of the interim rule implementing the CCA, all persons who acquired citizenship automatically under former section 321 of the Act, as previously

in force prior to February 27, 2001, may apply for a certificate of citizenship at any time.

Former section 321 of the Act provided, in part, 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; [Emphasis added.] 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.

The CCA removed the legal separation requirement from the rules of derivative naturalization. However, the provisions of the CCA are not retroactive. See *Matter of Rodriguez-Trejedor*, 23 I&N Dec. 153 (BIA 2001). As previously noted, the applicant was over the age of 18 when the CCA was enacted and is, therefore, not eligible to obtain the new benefits.

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. The applicant's parents do not have the legal separation required by section 321 of the Act.

The applicant did not automatically acquire U.S. citizenship through his mother's naturalization. Therefore, the district director's decision will be affirmed.

ORDER: The appeal is dismissed.