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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

PUBLIC COPY

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[Redacted]

JUN 05 2003

FILE: [Redacted] Office: Houston Date:

IN RE: Applicant: [Redacted]

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

ON BEHALF OF APPLICANT:

[Redacted]

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 Bureau of Citizenship and Immigration Services (Bureau) 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, Houston, Texas, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on October 11, 1980, in El Salvador. The applicant's father, [REDACTED] was born in El Salvador in February 1953 and never had a claim to U.S. citizenship. The applicant's mother, [REDACTED] was born in El Salvador in March 1955 and became a naturalized U.S. citizen in November 1994. The applicant's parents married each other on December 5, 1990. The applicant was lawfully admitted for permanent residence on April 2, 1992. 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 district director determined that the record failed to establish that the applicant met the requirements while under the age of 18 years and denied the application accordingly.

On appeal, counsel states that the applicant became a U.S. citizen under section 320 of the Act, 8 U.S.C. § 1431, as amended by the Child Citizenship Act (CCA) of 2000, Pub.L. 106-395.

The CCA took effect on February 27, 2001, and benefits all persons who have not yet reached their 18th birthday as of February 27, 2001. The applicant was 20 years and 4 months old on February 27, 2001. The provisions of the CCA are not retroactive. *Matter of Rodriguez-Trejedor*, 23 I&N Dec. 153 (BIA 2001). Therefore, he is not eligible for the benefits of the CCA.

Section 321 of the Act was repealed on February 27, 2001, by the CCA. 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; 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*, 21 I&N Dec. 893 (BIA 1997), the Board stated the following in reference to a Department of State *Passport Bulletin-96-18*, issued November 6, 1996: "Through subsequent discussions, [the interested agencies] have agreed on what we believe to be a more judicious interpretation of section 321(a) of the Act. 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. Citizenship would be acquired on the date the last condition is satisfied."

The record establishes that (1) the applicant's mother became a naturalized U.S. citizen prior to the applicant's 18th birthday, (2) the applicant was acknowledged by his father shortly after his birth, (3) his parents married each other when the applicant was 10 years old, and (4) he was residing in the United States in his parent's legal custody as a lawful permanent resident when his mother naturalized.

However, in order for the applicant to receive the benefits of section 321 of the Act, both parents must have naturalized prior to the applicant's 18th birthday.

There is no provision under the law by which the applicant could have automatically acquired U.S. citizenship through his mother's naturalization. Therefore, the appeal will be dismissed.

ORDER: The appeal is dismissed.