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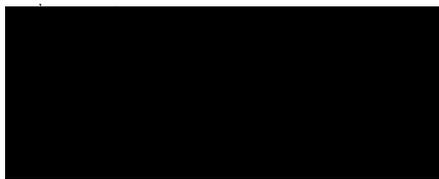
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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3042
Washington, DC 20529

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



FILE: 

Office: PHILADELPHIA (PITTSBURG), PA

Date: *00' 00' 00'*

IN RE: Applicant: 

APPLICATION: Application for Certificate of Citizenship.

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

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

The record reflects that the applicant was born in Colombia on September 15, 1980. The applicant's father was born in Colombia, and he became a naturalized United States (U.S.) citizen on June 27, 1996, when the applicant was sixteen years old. The applicant's mother was born in Colombia and she became a naturalized U.S. citizen on February 27, 2000, when the applicant was nineteen years old. The record contains no evidence that the applicant's parents married. The applicant was admitted into the United States as a lawful permanent resident on May 3, 1989. He presently seeks a certificate of citizenship.

The district director concluded that the applicant did not qualify for U.S. citizenship because he failed to meet the section 322 of the former Immigration and Nationality Act (the former Act) requirements prior to his eighteenth birthday. The application was denied accordingly.

On appeal, counsel asserts that automatic citizenship provisions contained in the Child Citizenship Act should be applied retroactively to the applicant.

Section 320, 8 U.S.C. § 1431 and section 322 of the former Act were amended by the Child Citizenship Act of 2000 (CCA), which took effect on February 27, 2001, when the applicant was twenty years old. Section 320 of the Act, as amended, permits a child born outside of the U.S. to automatically become a citizen of the United States upon fulfillment of the following conditions:

- (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.

Precedent legal decisions have made clear that CCA provisions are not retroactive, and that the amended provisions of section 320 of the Act apply only to persons who were not yet eighteen years old as of February 27, 2001. The AAO finds that because the applicant was over the age of eighteen on February 27, 2001, he is not eligible for citizenship under section 320 of the amended Act. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001).

Section 322 of the former Act stated, in pertinent part:

(a) Application of citizen parents; requirements

A parent who is a citizen of the United States may apply to the Attorney General [now the Secretary, Homeland Security, "Secretary"] for a certificate of citizenship on behalf of a child born outside the United States. The Attorney General [Secretary] shall issue such a certificate of citizenship upon proof to the satisfaction of the Attorney General [Secretary] that the following conditions have been fulfilled:

- 1) At least one parent is a citizen of the United States, whether by birth or naturalization.

- 2) The child is physically present in the United States pursuant to a lawful admission.
- 3) The child is under the age of 18 years and in the legal custody of the citizen parent.

....

- 5) If the citizen parent has not been physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years –
 - A) the child is residing permanently in the United States with the citizen parent, pursuant to a lawful admission for permanent residence, or
 - B) a citizen parent of the citizen parent has been physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years.

b) Attainment of citizenship status; receipt of certificate

Upon approval of the application . . . [and] upon taking and subscribing before an officer of the Service [CIS] within the United States to the oath of allegiance required by this chapter of an applicant for naturalization, the child shall become a citizen of the United States and shall be furnished by the Attorney General [Secretary] with a certificate of citizenship.

The applicant failed to establish that his father filed an N-600, Application for a Certificate of Citizenship (N-600 application) prior to the applicant's eighteenth birthday, or that an N-600 application process was completed prior to the applicant's eighteenth birthday. The applicant therefore does not qualify for citizenship under section 322 of the former Act.

The AAO additionally notes that the applicant fails to qualify for a certificate of citizenship under section 320 of the former Act.

Section 320 of the former Act stated in pertinent part that:

(a) A child born outside of the United States, one of whose parents at the time of the child's birth was an alien and the other of whose parents then was and never thereafter ceased to be a citizen of the United States, shall, if such parent is naturalized, become a citizen of the United States, when

(1) such naturalization takes place while such child is under the age of 18 years;
and

(2) such child is residing in the United States pursuant to a lawful admission for permanent residence at the time of naturalization or thereafter and begins to reside permanently in the United States while under the age of 18 years.

Neither of the applicant's parents was a U.S. citizen at the time of his birth. The applicant therefore does not qualify for consideration under section 320 of the former Act.

In addition, the applicant fails to qualify for citizenship pursuant to section 321 of the former Act. Section 321 of the former Act provided, in pertinent 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.

The applicant failed to establish that his mother became a naturalized U.S. citizen or that she became deceased prior to his eighteenth birthday. Furthermore, the applicant failed to establish that his parents were married, or that they obtained a legal separation or divorce prior to the applicant's eighteenth birthday.

8 C.F.R. § 341.2(c) states that the burden of proof shall be on the claimant to establish claimed citizenship by a preponderance of the evidence. The applicant in the present case has not met his burden. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.