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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

[Redacted]

FILE:

[Redacted]

Office: NEW YORK, NY

Date:

SEP 09 2004

IN RE:

Applicant:

[Redacted]

APPLICATION:

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

ON BEHALF OF APPLICANT:

[Redacted]

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, Director  
Administrative Appeals Office

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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**DISCUSSION:** The application was denied by the Interim 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 on April 20, 1981, in Venezuela. The applicant's father, [REDACTED] was born in Trinidad and Tobago, and he became a naturalized U.S. citizen on December 10, 1993. The applicant's mother, [REDACTED] was born in Venezuela and she is not a U.S. citizen. The applicant's parents did not marry. The applicant was admitted into the U.S. as a lawful permanent resident on May 9, 1988, pursuant to an immigrant visa petition filed by his father. The applicant seeks a certificate of citizenship pursuant to section 321 of the former Immigration and Nationality Act (the former Act), 8 U.S.C. § 1432.

The applicant's Form N-600, Application for Certificate of Citizenship (N-600 application) was initially denied by the district director, New York, New York, on June 1, 1995, based on a finding that only one of the applicant's parents was a naturalized U.S. citizen, and that the applicant therefore did not qualify for citizenship under section 321 of the former Act. The applicant did not appeal the 1995 decision in his case. However, on November 1, 2002, the Immigration and Naturalization Service (INS, now Citizenship and Immigration Services, CIS) reopened the applicant's N-600 application based on his submission of a death certificate indicating that his mother died prior to his eighteenth birthday. Based on an overseas investigation by U.S. Consular staff in Venezuela, the director, Philadelphia, Pennsylvania, concluded on January 8, 2004, that the death certificate submitted by the applicant was fraudulent, and that the applicant was ineligible for citizenship under section 321 of the former Act. The director found further that the applicant had failed to meet the requirements for citizenship under section 320 of the amended Immigration and Nationality Act (the Act), because he was over the age of eighteen when section 320 provisions took effect (on February 27, 2001).

Counsel appealed the director's January 8, 2004, decision on February 20, 2004, stating that the death certificate submitted by the applicant was not fraudulent, and that the decision failed to consider a new (second) death certificate that was submitted in the applicant's case.

In a decision dated March 10, 2004, the director acknowledged the applicant's informal submission of new death certificate evidence in early February 2004, and the director stated that the new evidence was considered a motion to reopen the applicant's case. Nevertheless, the director concluded that a February 25, 2004, overseas investigation by the U.S. Consular staff in Venezuela determined that the second death certificate was also fraudulent. The director affirmed the January 8, 2004, denial of the applicant's N-600 application accordingly.<sup>1</sup>

The AAO notes that the applicant had thirty days to appeal the director's January 8, 2004, decision to the AAO. *See generally* 8 C.F.R. § 103.3. The present appeal was filed forty-three days after the director's

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<sup>1</sup> The AAO notes that an immigration judge denied the applicant's citizenship claim on January 14, 2003, and ordered the applicant removed from the United States. The applicant appealed the removal order to the Board of Immigration Appeals (the Board) by presenting the second death certificate as evidence that his mother was deceased. The Board found that it had no jurisdiction to determine the authenticity of the second death certificate and the matter was remanded to the immigration judge for determination of authenticity. On March 31, 2004, the immigration judge found the second death certificate to be fraudulent and ordered the applicant removed from the United States. There is no evidence that the applicant appealed the immigration judge's decision to the Board.

decision was made. However, given the procedural complexity of this matter and the fact that the applicant was apparently detained throughout the process, the AAO will accept the present appeal as timely filed.

The AAO notes that section 321 of the former Act was repealed on February 27, 2001, by the Child Citizenship Act of 2000 (CCA). However, 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. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001).

Former section 321 of the 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 AAO finds the applicant has failed to establish that both of his parents became naturalized U.S. citizens prior to his eighteenth birthday. He also failed to establish that his parents ever married, or that his U.S. citizen father obtained legal custody over him pursuant to a legal separation or divorce. Moreover, the AAO finds the applicant failed to establish that his mother died prior to his eighteenth birthday. The record contains clear evidence that both death certificates submitted by the applicant were found to be fraudulent based on U.S. Consular staff investigations conducted in Venezuela, and no documentation or evidence was submitted on appeal to overcome the findings of the U.S. Consular investigation findings.

8 C.F.R. § 341.2(c) provides that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. In this case, the burden has not been met. The appeal will therefore be dismissed.

**ORDER:** The appeal is dismissed.