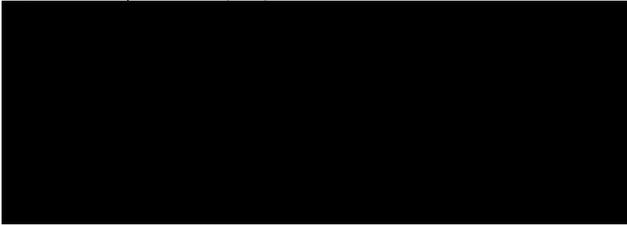




U.S. Citizenship
and Immigration
Services

LE 2



FILE:



Office: NEW YORK, NY

Date:

SEP 14 2004

IN RE:

Applicant:



APPLICATION:

Application for Certificate of Citizenship pursuant to Section 320 of the Immigration and Nationality Act; 8 U.S.C. § 1431 and Section 321 of the former Immigration and Nationality Act, 8 U.S.C. § 1432.

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

EXHIBIT COPY

DISCUSSION: The application was denied by the District Director, New York, New York, 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 September 6, 1962, in Ecuador. The applicant's father, [REDACTED] was born in Ecuador, and he became a naturalized U.S. citizen on January 21, 1971, when the applicant was eight years old. The applicant's mother was born in Ecuador and is not a U.S. citizen. The record reflects that the applicant's parents were married in Ecuador in 1955. The record reflects further that the applicant was admitted into the United States pursuant to a lawful admission for permanent residence in 1965. The applicant presently seeks a certificate of citizenship pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The director concluded that the applicant was ineligible for citizenship under section 320 of the Act because he was over the age of eighteen when the provision went into effect, on February 27, 2001. The director concluded further that the applicant failed to meet the requirements for citizenship under section 321 of the former Immigration and Nationality Act, (the former Act), 8 U.S.C. § 1432. The application was denied accordingly.

On appeal, counsel asserts that the applicant meets the requirements for citizenship under section 320 of the Act because his father became a naturalized U.S. citizen prior to the applicant's eighteenth birthday.

As of February 27, 2001, the Child Citizenship Act of 2000 (CCA) repealed section 321 of the former Act, and amended sections 320 and 322 of the former Act, 8 U.S.C. §§ 1431 and 1433. Section 320(a) of the amended Act presently allows 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.

The provisions of the CCA are not retroactive and the amended provisions of section 320 apply only to persons who were not yet eighteen-years-old as of February 27, 2001. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). Because the applicant was over the age of eighteen on February 27, 2001, he is not eligible for the benefits of section 320 of the amended Act.

Nevertheless, the AAO notes that all persons who acquired citizenship automatically under section 321 of the former 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, supra*. 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 applicant does not qualify for consideration under former section 321 of the Act. The evidence in the record does not establish that both of the applicant's parents were naturalized citizens, or that his mother is deceased. Moreover, the evidence in the record fails to establish that the applicant was born out of wedlock or that his parents became legally separated.

8 C.F.R. § 341.2(c) provides that the burden of proof shall be on the claimant to establish U.S. 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.