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U.S. Citizenship  
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Services

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FILE: [REDACTED] Office: NEW YORK, NY Date: AUG 24 2005

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under Sections 320, 321 and 322 of the former Immigration and Nationality Act; 8 U.S.C. §§ 1431, 1432 and 1433.

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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

**DISCUSSION:** The application was denied by the District Director, New York, New York. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born in the Dominican Republic on January 3, 1981. The applicant's mother, [REDACTED] was born in the Dominican Republic on November 15, 1962, and she became a naturalized U.S. citizen on August 6, 1996, when the applicant was fifteen years old. The applicant's father [REDACTED] was born in the Dominican Republic on February 17, 1950, and he is not a U.S. citizen. The record reflects that the applicant's parents married on December 20, 1981. The applicant was admitted into the United States as a lawful permanent resident on February 3, 1987, when he was six years old. He presently seeks a certificate of citizenship pursuant to sections 320, 321 and 322 of the former Immigration and Nationality Act (the former Act), 8 U.S.C. §§ 1431, 1432 and 1433.

The district director concluded that the applicant did not qualify for U.S. citizenship pursuant to section 322 of the former Act because he turned eighteen prior to the completion of his Form N-600, Application for Certificate of Citizenship (N-600 application). The district director determined further that the applicant did not qualify for citizenship pursuant to section 320 of the former Act, 8 U.S.C. § 1431, because his parents were not U.S. citizens prior to his eighteenth birthday. The application was denied accordingly.

On appeal, the applicant asserts through his mother that his mother (Ms. [REDACTED]) obtained a divorce from his father in 1997, and that he was in the custody of Ms. [REDACTED] subsequent to the divorce. The applicant concludes that he is therefore entitled to U.S. citizenship.

The AAO notes that the Child Citizenship Act of 2000 (CCA) repealed section 321 of the former Act, and amended sections 320 and 322, of the former Act as of February 27, 2001. The provisions of the CCA are not retroactive, thus the amended provisions apply only to persons who were not yet eighteen years old on February 27, 2001. The applicant was over the age of eighteen on February 27, 2001. He is therefore not eligible for consideration under the amended Act provisions. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001).

Section 322 of the former Act, as in effect prior to February 27, 2001, 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.

....

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 AAO notes that, whether or not an applicant satisfies the requirements set forth in section 322(a) of the former Act, under section 322(b) of the Act, an applicant must also establish that the application for U.S. citizenship was approved by the Service (now U.S. Citizenship and Immigration Services, CIS) prior to the applicant's eighteenth birthday. The applicant must additionally take an oath of allegiance prior to turning eighteen.

It is noted that the requirements set forth in section 322(b) of the former Act are statutorily mandated, and that they are not changed due to Citizenship and Immigration Services processing delays. In the present matter, the applicant failed to meet the requirements set forth in section 322(b) of the former Act because the Service (CIS) did not adjudicate or approve his certificate of citizenship application before he turned eighteen, and because he did not take an oath of allegiance prior to his eighteenth birthday.

The applicant also fails to qualify for U.S. citizenship pursuant to 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 were U.S. citizens at the time of his birth. The applicant therefore does not qualify for consideration under section 320 of the former Act.

The AAO finds further that the applicant does not qualify for U.S. citizenship pursuant to section 321 of the former Act, which 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 claims on appeal that his parents divorced in 1997, and that he subsequently resided in the legal and physical custody of his U.S. citizen mother. However, the record does not contain a divorce decree for the applicant's parents, and the record is devoid of any other evidence to establish that the applicant's parents divorced and that the applicant's mother was awarded legal custody over the applicant prior to his eighteenth birthday.

8 C.F.R. § 341.2(c) states that the burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. The applicant has failed to meet his burden of proof in the present matter. The appeal will therefore be dismissed.

**ORDER:** The appeal is dismissed.