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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

JUN 14 2005

FILE:

Office: BUFFALO, NEW YORK

Date:

IN RE:

Applicant:

APPLICATION:

Application for Certificate of Citizenship under § 321 (repealed) of the Immigration and Nationality Act; 8 U.S.C. § 1432.

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, Buffalo, 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 June 6, 1971 in Guyana. The applicant was admitted into the United States as a lawful permanent resident November 27, 1981. The applicant's father was born in Guyana, and he became a naturalized U.S. citizen on January 27, 1987, when the applicant was fifteen years old. The applicant's mother was also born in Guyana and is not a U.S. citizen. The applicant's mother abandoned his family and home January 15, 1988, and his parents legally divorced on January 22, 1991, when the applicant was nineteen years old. The applicant seeks a certificate of citizenship pursuant to § 321 (repealed) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432.

The district director concluded that the applicant was statutorily ineligible for a certificate of citizenship under § 320 of the amended Act, 8 U.S.C. § 1431, because he turned eighteen years old before this amendment took effect. The district director further determined that the applicant was ineligible for citizenship pursuant to the repealed § 321 of the Act, since the applicant's parents divorced after he turned eighteen. The application was denied accordingly.

On appeal, the applicant asserts that the district director erroneously determined that his parents were legally separated subsequent to his eighteenth birthday. The applicant contends that according to New York law, his parents' de facto separation, which occurred when he was sixteen years old, constituted a legal separation for the purposes of § 321 (repealed) of the Act, and therefore, he qualifies for citizenship under this section of law. In support of his assertions, the applicant submits a copy of the New York Supreme Court's findings in the matter of his parents' divorce and a copy of the relevant section of New York Domestic Relations Law. The entire record has been reviewed in rendering this determination, and the AAO concurs with the district director's assessment of the applicant's eligibility.

Former §§ 320 and 322 of the Act were amended by the Child Citizenship Act of 2000 (CCA), which took effect on February 27, 2001, and § 321 of the former Act, 8 U.S.C. § 1432, was repealed. 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.

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

Nevertheless, the AAO notes that all persons who acquired citizenship automatically under § 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, supra.*

The repealed § 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 was admitted into the United States in 1981, and the applicant's father became a naturalized U.S. citizen in 1987. Both events occurred prior to the applicant's eighteenth birthday. Regarding subsection (a)(3), the applicant's father obtained a divorce decree on January 22, 1991, on which date he was awarded legal custody of the applicant and his brother. At that time, the applicant was nineteen years old; thus, he does not meet the age requirement described above.

The applicant claims that according to New York State Consolidated Laws (NYSCL) Article 11, § 200, and Article 10, § 170, his mother's abandonment of his father in 1988 constituted a legal separation. NYSCL, Article 11, § 200 states, in pertinent part:

Action for separation. An action may be maintained by a husband or wife against the other party to the marriage to procure a judgment separating the parties from bed and board, forever, or for a limited time, for any of the following causes:

....

2. The abandonment of the plaintiff by the defendant.

NYSCL, Article 10, § 170 states, in pertinent part:

Action for divorce. An action for divorce may be maintained by a husband or wife to procure a judgment divorcing the parties and dissolving the marriage on any of the following grounds:

.....

(2) The abandonment of the plaintiff by the defendant for a period of one or more years.

New York law does not declare that the legal separation or divorce becomes effective on the date of abandonment; it states that abandonment is grounds for legal separation or divorce. The record fails to establish that the applicant's parents were legally separated or that the applicant's father had legal custody of the applicant prior to the applicant's eighteenth birthday, as required by § 321 (repealed) of the Act. He is therefore not eligible for a certificate of citizenship.

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

ORDER: The appeal is dismissed.