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U.S. Citizenship  
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Services

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FILE: [REDACTED] Office: PHILADELPHIA, PENNSYLVANIA Date: JUN 29 2005

IN RE: Applicant [REDACTED]

APPLICATION: Application for Certificate of Citizenship under § 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*

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 Ghana on February 18, 1973. The applicant's father and mother were also born in Ghana, and only his father became a naturalized U.S. citizen on May 3, 1982, when the applicant was nine years old. The applicant's parents married each other in Ghana in 1981. The applicant was admitted to the United States as a lawful permanent resident (LPR) on May 13, 1989, when he was sixteen years old. His parents began to live in separate homes in 1990, but the record does not contain evidence that they were legally separated or divorced. His mother passed away in 1993 when he was twenty years old. The applicant seeks a certificate of citizenship pursuant to § 321 of the former Immigration and Nationality Act (former Act), 8 U.S.C. § 1432.

The district director found that the only section of law applicable to the applicant's eligibility for a certificate of citizenship was § 321 of the former Act. He concluded that the applicant did not qualify for a certificate of citizenship based on his father's naturalization, because only his father became a naturalized citizen, and his parents were not divorced or legally separated. The application was denied accordingly.

On appeal, counsel asserts that the provisions of the Child Citizenship Act of 2000 (CCA), which took effect on February 27, 2001, amending §§ 320 and 322 and repealing § 321 of the former Act, apply to the instant application for a certificate of citizenship. Counsel contends that the failure of Citizenship and Immigration Services (CIS) to apply the CCA retroactively to the applicant, who turned eighteen prior to its February 27, 2001 effective date, deprives the applicant of his constitutional rights to equal protection. However, the AAO, like the Board of Immigration Appeals, cannot rule on the constitutionality of laws enacted by Congress. *See, e.g., Matter of Fuentes-Campos*, 21 I&N Dec. 905 (BIA 1997); *Matter of C-*, 20 I&N Dec. 529 (BIA 1992).

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, as counsel asserts. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). The AAO finds that the district director properly applied § 321 of the former Act to the instant application.

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.

In this case, only one of the applicant's parents naturalized, and his mother passed away after he turned eighteen years old; therefore, the applicant does not meet either of the first two provisions above. Although the record reflects that the applicant's parents ceased living together in 1990, the evidence contains no documentation of any legal separation or divorce; hence, the applicant does not meet the third provision of § 321 of the former Act. Because the applicant does not fulfill the requirements of the only section of law applicable to his situation, he does not qualify for a certificate of citizenship due to his father's naturalization, pursuant to § 321 of the former Act, 8 U.S.C. § 1432.

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 failed to meet his burden, and the appeal will be dismissed.

**ORDER:** The appeal is dismissed.