

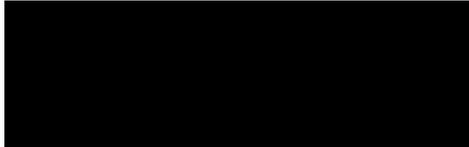
Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



Er

FILE: [REDACTED] Office: BUFFALO, NEW YORK 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:

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

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 in Haiti on January 27, 1981. The applicant's parents married each other in 1984, legitimating the applicant. The applicant's father and mother were also born in Haiti, and only his father became a naturalized U.S. citizen on January 6, 1995, when the applicant was thirteen years old. The applicant was admitted to the United States as a lawful permanent resident (LPR) on January 21, 1986, when he was fourteen 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 correct section of law applicable to the applicant's eligibility for a certificate of citizenship is § 321 of the former Act. She 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 remained married. The application was denied accordingly.

On appeal, the applicant asserts that, in light of domestic and international policy considerations, 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, should be considered in analyzing his application. However, 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 the CCA. *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, both his parents were living while he was under the age of eighteen, and his parents remained married to each other. Because the applicant does not fulfill all of the above-noted requirements, 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.