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U.S. Citizenship
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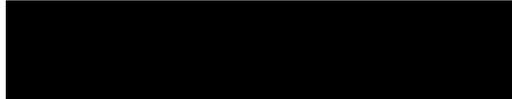
Office: PHILADELPHIA, PA

Date:

OCT 21 2005

IN RE:

Applicant:



APPLICATION:

Application for Certificate of Citizenship under Section 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.

A handwritten signature in black ink, appearing to read "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 on January 25, 1983, in Colombia. The applicant's father, [REDACTED] was born in Colombia, and he became a naturalized U.S. citizen on June 20, 2001, when the applicant was eighteen years old. The applicant's mother, [REDACTED] was born in Colombia. She became a naturalized U.S. citizen on July 19, 2001, when the applicant was eighteen years old. The record reflects that the applicant's parents married on December 19, 1970. The applicant was admitted into the United States as a lawful permanent resident on May 15, 1992, when he was nine years old. The applicant seeks a certificate of citizenship pursuant to section 321 of the former Immigration and Nationality Act (the former Act), 8 U.S.C. § 1432.

The district director determined that the applicant did not qualify for a certificate of citizenship under section 321 of the former Act because he was eighteen when his parents became naturalized U.S. citizens. The district director determined further that the applicant did not qualify for citizenship pursuant to section 320 of the amended Immigration and Naturalization Act (the Act), 8 U.S.C. § 1431, because he was eighteen on February 27, 2001, when the provision came into effect. The application was denied accordingly.

On appeal, the applicant concedes that he was eighteen years old when his parents became naturalized U.S. citizens. The applicant asserts, however, that he was under the age of eighteen when his parent applied for U.S. citizenship, and that he had not yet been arrested at the time he filed for citizenship. The applicant asserts that Constitutional equal protection and procedural due process rights entitle him to U.S. citizenship.

The AAO notes that it has no jurisdiction to rule upon the constitutionality of the Act and the Regulations. *See Matter of C-*, 20 I&N Dec. 29 (BIA 1992). The AAO will therefore not address the applicant's general assertion that the district director's application of statutory citizenship provisions violated his constitutional equal protection and procedural due process rights.

The AAO notes further that the requirements for citizenship set forth in the former and amended Acts are statutorily mandated by Congress, and that U.S. Citizenship and Immigration Services (CIS) lacks authority to issue a certificate of citizenship when an applicant fails to meet statutory provisions for U.S. citizenship. *Iddir v. INS*, 301 F.3d 492 (7th Cir. 2002). The AAO therefore finds that in order to obtain a certificate of citizenship, the applicant must establish that he fully meets section 321 of the former Act requirements.

Section 321 of the former Act provides, 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 the present matter, the applicant failed to establish that both of his parents became naturalized U.S. citizens prior to his eighteenth birthday, and the applicant does not otherwise meet the requirements set forth in section 321 of the former Act. The application therefore does not qualify for citizenship under section 321 of the former Act.

The AAO additionally notes that the applicant does not qualify for U.S. citizenship pursuant to section 320 of the Act, as amended by the Child Citizenship Act of 2000 (CCA), effective February 27, 2001.¹ Precedent legal decisions establish that the provisions of the CGA are not retroactive and that the amended provisions contained in sections 320 and 322 of the Act 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 eighteen on February 27, 2001, he is not eligible for the benefits of section 320 of the Act.

The applicant also failed to qualify for a certificate of citizenship pursuant to section 320 of the former Act, 8 U.S.C. § 1431 (which required one of his parents to be a U.S. citizen at the time of the applicant's birth, and required the naturalization of the other parent prior to the applicant's eighteenth birthday), or section 322 of the former Act, 8 U.S.C. § 1433 (which required the applicant to be under the age of eighteen when his parents became naturalized U.S. citizens, and required the applicant take an oath of allegiance 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. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.

¹ Section 320 of the Act states in pertinent part that:

- (a) A child born outside of the United States automatically becomes a citizen of the United States when all of the following conditions have been fulfilled:
 - (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.