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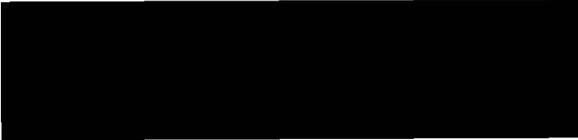
U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. A3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED] Office: WASHINGTON D.C.(NORFOLK) Date: **AUG 22 2006**

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship pursuant to § 320 of the Immigration and Nationality Act; 8 U.S.C. § 1431.

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, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the District Director, Washington D.C., and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant was born on October 12, 1978 in Nigeria. The applicant's parents were married in 1976, and there is no evidence that they ever divorced. The applicant's mother is not a U.S. citizen. The applicant has been residing in the United States since 1985. The applicant's father became a naturalized U.S. citizen in 1995, and the applicant became a lawful permanent resident (LPR) in 1996. The latter events occurred while the applicant was under eighteen years of age, and the applicant is now twenty seven years old. The applicant applied for a certificate of citizenship based on the claim that he acquired citizenship when his father naturalized.

The district director concluded that the applicant was statutorily ineligible for a certificate of citizenship under § 320 of the Act. The Child Citizenship Act of 2000 (CCA) took effect on February 27, 2001, and its provisions 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, 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). **The applicant's claim to a certificate of citizenship falls under citizenship provisions of the Act prior to its amendment by the CCA.**

On appeal, the applicant indicates that he has been a permanent resident for over five years, and he seeks a certificate of citizenship by virtue of his father's naturalization. The AAO has reviewed the record of proceeding and has determined that the applicant has not established eligibility for a certificate of citizenship under any section of the former Act. For example, § 320(a) of the former Act provides, in pertinent part, that

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 alien parent is naturalized, become a citizen of the United States, when--

- (1) such naturalization takes place while such child is under the age of eighteen 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 eighteen years. . . .

Neither of the applicant's parents were U.S. citizens at the time of his birth. The applicant therefore does not qualify for U.S. citizenship under § 320 of the former Act.

Section 321(a) of the former Act provides, in pertinent part, that

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 such child is under the age of eighteen 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 (1) of this subsection, or the parent naturalized under clause (2) or (3) of this subsection, or thereafter begins to reside permanently in the United States while under the age of eighteen years. . . .

Section 321(a) of the former Act does not apply in the applicant's case, because his mother was not deceased nor were his parents ever legally separated or divorced.

Section 322 of the former Act states, in pertinent part, that

(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.

This provision does not apply to the instant application, because Citizenship and Immigration Services (CIS) did not approve the application or administer an oath of allegiance before the applicant's eighteenth birthday. 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 that burden, and the appeal will be dismissed.

**ORDER:** The appeal is dismissed.<sup>1</sup>

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<sup>1</sup> The AAO notes that the present decision is without prejudice to the applicant's filing, if eligible, an N-400, Application for Naturalization pursuant to section 316 of the Act, 8 U.S.C. § 1427.