



U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: DEC 27

IN RE:

Applicant:



APPLICATION:

Application for Certificate of Citizenship under Section 321 of the former Immigration and Nationality Act; Pub. L. 82-414, 66 Stat. 245 (June 27, 1952).

ON BEHALF OF APPLICANT:



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 Director, California Service Center, 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 Hungary on January 10, 1941. The record does not show that the applicant's father was a U.S. citizen. The applicant's mother, [REDACTED] was born in Hungary on January 20, 1919, and she became a naturalized U.S. citizen on December 6, 1955, when the applicant was 14 years old. The record reflects that the applicant's parents were married on July 29, 1937, and they were divorced on December 10, 1965. The applicant was admitted into the United States as a lawful permanent resident on December 13, 1949, when he was eight years old. He presently seeks a certificate of citizenship under section 321 of the former Immigration and Nationality Act (the former Act), Pub. L. 82-414, 66 Stat. 245 (June 27, 1952).

The director concluded that the applicant failed to establish that he became a U.S. citizen by operation of law due to the fact that both of his parents did not become U.S. citizens, as required by section 321 of the former Act. *Decision of the Director*, dated January 23, 2006. The application was denied accordingly.

On appeal, the applicant explains the facts that led to his arrival in the United States and his mother's naturalization. *Statement from Applicant on Appeal*, submitted on February 24, 2006. He provides that his father did not become a U.S. citizen, yet his three brothers were permitted to naturalize regardless. *Id.*

Section 321 of the former Act provides the following:

Children born outside United States of alien parents; conditions for automatic citizenship

(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;
- (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 unmarried and 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.

Upon review, as noted by the director, the applicant has not shown that he meets the requirements of section 321(a)(1) of the former Act, as both of his parents did not become U.S. citizens.

The applicant's father is deceased. However, the record reflects that he was alive at the time that the applicant's mother naturalized on December 6, 1955, and after the applicant reached 18 years of age. Specifically, the record shows that the applicant's parents divorced on December 10, 1965, 10 years after the applicant's mother naturalized, when the applicant was 24 years old. Therefore, as the applicant's father's death did not occur prior to the applicant's eighteenth birthday, the applicant's mother's naturalization was not "the naturalization of [a] surviving parent," as contemplated by section 321(a)(2) of the former Act. See Memorandum from Terrance M. O'Reilly, Acting Assistant Commissioner of the Immigration and Naturalization Service Memorandum, Naturalization Division, dated February 18, 1997 (noting that there is no specific order in which the conditions of section 321(a) of the former Act must be satisfied as long as all conditions are satisfied before the applicant's eighteenth birthday).

The applicant's parents were married when the applicant was born and when the applicant's mother naturalized. Thus, the applicant was not born out-of-wedlock. Further, as noted above, the applicant's parents divorced on December 10, 1965, 10 years after the applicant's mother naturalized, when the applicant was 24 years old. Thus, the naturalization of the applicant's mother was not "the naturalization of [a] parent having legal custody of [the applicant] where there [had] been a legal separation of the [applicant's] parents . . .," as contemplated by section 321(a)(3) of the former Act.

Based on the foregoing, the applicant has not established that he became a U.S. citizen by operation of law under section 321(a) of the former Act.

The AAO further notes that the applicant does not qualify for a certificate of citizenship under the present section 320 of the Act. Section 320 of the Act was amended by the Child Citizenship Act of 2000 (CCA), and took effect on February 27, 2001. The CCA superceded section 321(a) of the former Act, and eliminated the provision addressing the requirement that both parents become U.S. citizens in order for an individual to become a U.S. citizen by operation of law. However, the CCA benefits persons who had not yet reached their eighteenth birthdays as of February 27, 2001. Because the applicant was over age 18 on February 27, 2001, he does not meet the age requirement for benefits under the CCA.

The applicant states that his three brothers were permitted to naturalize. However, the applicant has not submitted evidence to show that his brothers became U.S. citizens, and if so, to show the basis for their naturalization. The fact that the applicant's brothers may have become naturalized U.S. citizens does not establish that the applicant is eligible for a certificate of citizenship.

Accordingly, the applicant has not shown that he is eligible for a certificate of citizenship pursuant to the present Form N-600 application.

The regulation at 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.