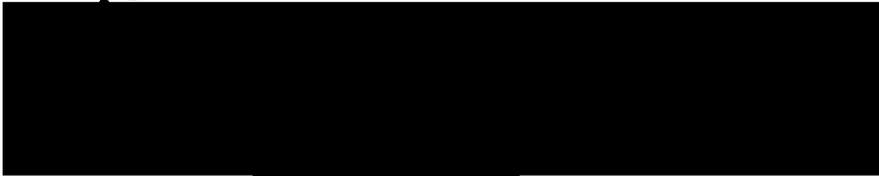


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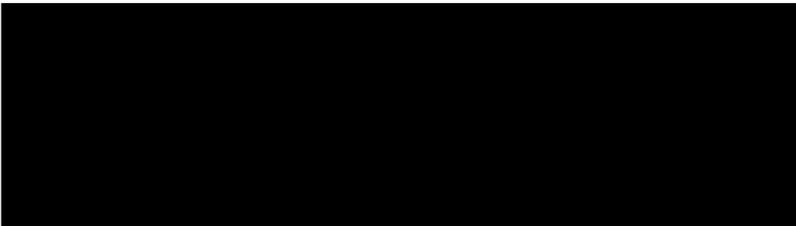
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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **AUG 30 2007**

IN RE: Applicant: [REDACTED]

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:



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, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, California Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the application denied.

The record reflects that the applicant was born in Cape Verde on May 1, 1980. The applicant's father became a naturalized U.S. citizen on December 14, 1995, when the applicant was fifteen years old. The applicant's mother is not a U.S. citizen. The record reflects that the applicant's parents were never married. The applicant was admitted into the United States as a lawful permanent resident on May 28, 1986, when he was six years old. The applicant presently seeks a certificate of citizenship pursuant to section 321 of the former Immigration and Nationality Act (former Act), 8 U.S.C. § 1432.

The director determined that the applicant was ineligible for U.S. citizenship under section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431, because he was over the age of eighteen on February 27, 2001, when the provision took effect. The director determined further that the applicant was ineligible for U.S. citizenship under section 321 of the former Act, because he failed to establish that both his parents became naturalized U.S. citizens prior to his eighteenth birthday. The Form N-600, Application for Certificate of Citizenship (Form N-600 Application) was denied accordingly.

On appeal the applicant asserts through counsel that, although his parents never married, he was legitimated by his father prior to his eighteenth birthday. The applicant asserts through counsel that his father became a naturalized U.S. citizen prior to the applicant's eighteenth birthday, and that he was admitted into the United States as a lawful permanent resident, and was in the legal custody of his father prior to his eighteenth birthday. The applicant concludes that he is therefore entitled to citizenship under section 321 of the former Act.

Section 320 of the former Act was amended by the Child Citizenship Act of 2000 (CCA), and took effect on February 27, 2001.<sup>1</sup> The provisions of the CCA are not retroactive and the amended provisions of section 320 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 over the age of eighteen on February 27, 2001, he is not eligible for consideration under section 320 of the Act.

Section 321 of the former Act was repealed by the CCA. However, all persons who acquired citizenship automatically under section 321 of the former Act, as previously in force prior to February 27, 2001, may apply for a certificate of citizenship at any time. *See Matter of Rodriguez-Tejedor, supra.*

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<sup>1</sup> 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.

Section 321(a) of the former Act, states, 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 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. (Emphasis added.)

Section 101(c)(1) of the Act, 8 U.S.C. § 1101(c)(1) provides that for citizenship purposes:

The term "child" means an unmarried person under twenty-one years of age and includes a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in the United States or elsewhere, and, except as otherwise provided in sections 320, and 321 of title III, a child adopted in the United States, if such legitimation or adoption takes place before the child reaches the age of 16 years (except to the extent that the child is described in subparagraph (E)(ii) or (F)(ii) of subsection (b)(1)), and the child is in the legal custody of the legitimating or adopting parent or parents at the time of such legitimation or adoption.

The applicant's father's name is recorded on the applicant's birth certificate, and the applicant has established that he was legitimated by his father at birth, under Cape Verde law. *See Matter of Cardoso*, 19 I&N Dec. 5 (BIA 1983.) The applicant therefore meets the definition of "child" as set forth in section 101(c) of the Act. The applicant has failed, however, to establish that his legitimation qualifies him for citizenship under section 321 of the former Act.

The record contains no evidence to establish that the applicant's mother became a naturalized U.S. citizen prior to the applicant's eighteenth birthday. The applicant therefore fails to meet the requirements set forth in section 321(a)(1) of the former Act. The conditions contained in section 321(a)(2) of the former Act have also not been established. Furthermore, the applicant failed to satisfy the "legal separation" requirements set forth in section 321(a)(3) of the former Act. "[L]egal separation of the parents . . . means either a limited or absolute divorce obtained through judicial proceedings . . . where the actual parents of the child were never married, there could be

no legal separation of such parent.” See *Matter of H*, 3 I&N Dec. 742 (1949) (Quotations omitted). The applicant’s birth certificate, as well as statements made by his parents in affidavits contained in the record, reflect that the applicant was born out of wedlock, and that his parents never married. Because the applicant’s parents never married, there could be no legal separation between his parents. The requirements set forth in section 321(a)(3) of the former Act have therefore not been met.

The regulation provides at 8 C.F.R. § 341.2(c) 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 failed to meet his burden of proof in the present matter. The appeal will therefore be dismissed and the application will be denied.

**ORDER:** The appeal is dismissed. The application is denied.