

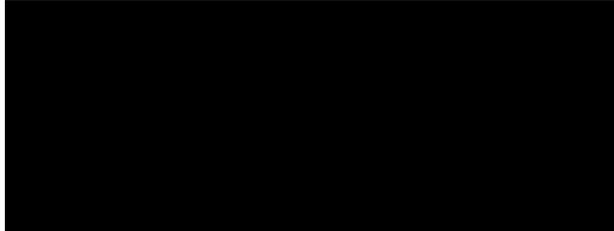
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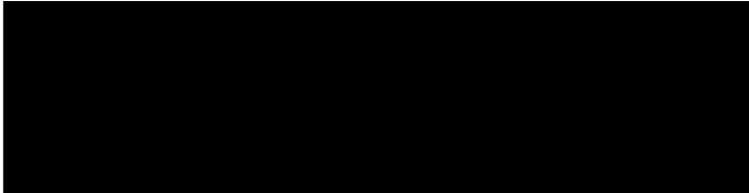


FILE:  Office: ATLANTA, GA Date: **JUL 27 2007**

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:



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 Interim District Director, Atlanta, Georgia, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant was born on April 19, 1979 in Monrovia, Liberia. The birth certificate provided by the applicant indicates that his parents were [REDACTED] and [REDACTED]. The applicant's parents were never married to each other. On March 10, 1994, at the age of 14, the applicant was admitted to the United States as a lawful permanent resident based upon a petition filed by his U.S. citizen father. The applicant's father had naturalized on February 19, 1988, when the applicant was nine years old. The applicant's mother became a naturalized U.S. citizen on June 3, 1996, when the applicant was 17 years old. The applicant seeks a certificate of citizenship pursuant to section 321 of the former Immigration and Naturalization Act (the former Act), 8 U.S.C. § 1432 (repealed) claiming that he derived citizenship through his parents.

The district director denied the applicant's citizenship claim finding, *inter alia*, that he had not established that [REDACTED] was his mother. The application was denied accordingly. On appeal, the applicant submits the results of a genetic test establishing that [REDACTED] is his natural mother. The applicant claims that his mother changed her name several times and thus explains the previous use of the name [REDACTED].

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.

The AAO notes that legal precedent decisions have clearly established 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 section 320 or 322 of the amended Act, 8 U.S.C. § 1431 or 1433. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001).

8 C.F.R. § 341.2(c) provides that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. In order to meet this burden, the applicant must submit relevant, probative and credible evidence to establish that the claim is “probably true” or “more likely than not.” *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989).

The record in this case contains evidence establishing that the applicant’s natural parents were [REDACTED] and [REDACTED] and that both parents were naturalized prior to the applicant’s 18th birthday. The record also establishes that the applicant was under 18 when he was admitted to the United States as a lawful permanent resident. Unlike section 321(a)(3) of the former Act, section 321(a)(1) does not require that the applicant’s parents be married or legally separated, or that the applicant have been residing in the custody of a particular parent. The AAO finds that the applicant has thus established that he derived U.S. citizenship upon the naturalization of his natural parents.

The applicant in the present case has met his burden of proof and the appeal will be sustained.

ORDER: The appeal is sustained.