



U.S. Citizenship
and Immigration
Services

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FILE: [Redacted]

Office: BUFFALO, NY

Date: JUN 11 2007

IN RE: Applicant [Redacted]

APPLICATION: Application for Certificate of Citizenship pursuant to Section 321(a) of the Nationality Act,
8 U.S.C. § 1432(a), now repealed

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 District Director, Buffalo, New York 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 July 28, 1979 in Port-au-Prince, Haiti. The applicant's father, [REDACTED], born in Haiti, became a naturalized U.S. citizen on July 17, 1996, when the applicant was 16 years old. The applicant's mother died on January 20, 1994, when the applicant was 14 years old. The applicant's father and mother were married on March 21, 1970. The applicant was admitted to the United States as a visitor on or about June 15, 1983. He was denied lawful permanent resident status on August 1, 2000. The applicant seeks a certificate of citizenship pursuant to former section 321(a) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432(a) based on the naturalization of his father.

The section of law under which the applicant contends he has established U.S. citizenship was repealed by the Child Citizenship Act of 2000 (CCA), effective as of February 27, 2001. However, any person who would have acquired automatic citizenship under its provisions prior to February 27, 2001 may apply for a certificate of citizenship at any time. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). Therefore, the issue before the AAO is whether the applicant has established that he acquired U.S. citizenship under section 321(a) of the Act prior to February 27, 2001.

Former section 321 of the Act, 8 U.S.C. § 1432, provided 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.

On appeal, the applicant contends that there are errors in the district director's decision and that if the requirements of section 321 are viewed correctly, he has satisfied the requirements for citizenship.

Guidance issued by the former Immigration and Naturalization Service (now Citizenship and Immigration Services (CIS)) on February 18, 1997 provides the following discussion of former section 321(a) requirements:

Section 321(a) of the Act provides for acquisition of citizenship of a minor upon the naturalization of both his/her parent(s) (or the surviving parent or the parent with legal custody) provided certain conditions are satisfied. There is no specific order in which the conditions of the law must be satisfied for citizenship as long as all conditions are satisfied before the child's 18th birthday.

In that the applicant in the present case seeks to establish citizenship under section 321(a) of the Act based on his father's naturalization, he must prove that, prior to his 18th birthday, he acquired U.S. lawful permanent resident status, his father became a U.S. citizen and his mother died, leaving the applicant's father as his surviving parent. The record demonstrates that the applicant's father naturalized in 1996 and his mother died in 1994, both events occurring prior to the applicant's 18th birthday on July 28, 1997. Therefore, the applicant has satisfied the requirements of sections 321(a)(2) and 321(a)(4). However, the record does not indicate that the applicant also acquired lawful permanent resident status prior to his 18th birthday, as required by section 321(a)(5). Instead, it indicates that the applicant applied for adjustment of status on April 7, 1997 at the age of 17 years and 8 months, and that his application was subsequently denied on August 1, 2000. As he was not granted lawful permanent resident status prior to his 18th birthday, the applicant has failed to prove that he qualified for U.S. citizenship under section 321(a) of the Act prior to February 27, 2001.¹

The AAO notes further that the applicant would also have failed to qualify for citizenship pursuant to former section 320 of the Act, 8 U.S.C. § 1431. Former section 320 of the Act provided that:

(a) 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 parent is naturalized, become a citizen of the United States, when

(1) such naturalization takes place while such child is under the age of 18 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 18 years.

Neither of the applicant's parents were U.S. citizens at the time of his birth. The applicant therefore would not have been eligible for U.S. citizenship under former section 320 of the Act.

The applicant would also not have been able to establish eligibility for U.S. citizenship under former section 322 of the Act, which provided that:

(a) 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

¹ Although section 320 of the Act, as amended by the CCA, permits a child born outside of the United States to automatically become a citizen based on the naturalization of one parent, the provisions of the CCA are not retroactive. 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, he is not eligible for the benefits of section 320 of the Act, as amended. See *Matter of Rodriguez-Tejedo, supra*.

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) Upon approval of the application . . . [and] upon taking and subscribing before an officer of the Service 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.

The AAO notes that, whether or not an applicant satisfied the requirements set forth in former section 322(a) of the Act, section 322(b) required that an applicant also establish that his or her application for citizenship was approved by CIS prior to the applicant's eighteenth birthday, and that the applicant had taken an oath of allegiance prior to turning eighteen. The applicant in the instant case would not have met the requirements set forth in former sections 322(a) or (b) of the Act. As previously discussed, the record does not establish that the applicant acquired lawful permanent resident status prior to his 18th birthday. Neither does it prove that the applicant was in the legal custody of his father prior to turning 18 years of age. Moreover, CIS did not approve his certificate of citizenship application before he turned eighteen, and he did not take an oath of allegiance prior to his eighteenth birthday.

For the reasons previously discussed, the applicant has not established that he is eligible for a certificate of citizenship. Accordingly, the AAO will not disturb the director's denial of the application.

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden.

ORDER: The appeal is dismissed.