

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

*E2*



FILE:



Office: LOS ANGELES, CA

Date: MAR 27 2007

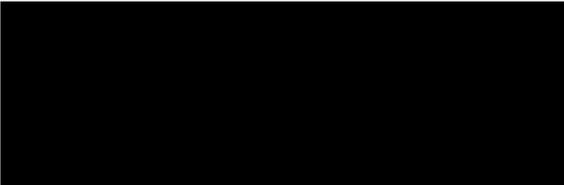
IN RE:

Applicant:



APPLICATION: Application for Certificate of Citizenship pursuant to Section 321(a)(3) of the Nationality Act, 8 U.S.C. § 1432(a)(3), now repealed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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the District Director, Los Angeles, California 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 February 25, 1979 in Armenia. The applicant's mother, [REDACTED] also born in Armenia, became a naturalized U.S. citizen on June 23, 1994, when the applicant was 15 years old. The applicant's father, [REDACTED] born in Syria, became a naturalized citizen on March 16, 2001. The applicant's parents married on June 29, 1974. The applicant was admitted into the United States as a lawful permanent resident on January 31, 1981 when he was one year old. The applicant, as stated by counsel on appeal, seeks a certificate of citizenship pursuant to former section 321(a)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432(a)(3).

The district director denied the application because the applicant is not eligible for consideration under section 320 of the Act, 8 U.S.C. § 1431. Section 320 of the Act was amended by the Child Citizenship Act of 2000 (CCA), and took effect on February 27, 2001. The CCA benefits all persons who had not yet reached their eighteenth birthdays as of February 27, 2001. Because the applicant was more than 18 years of age on February 27, 2001, he is not eligible for consideration under section 320 of the Act. However, as stated by counsel, the applicant is not seeking a certificate of citizenship under the requirements of section 320 of the Act, but under those of section 321, 8 U.S.C. § 1432.

On the Form I290-B, Notice of Appeal to the Administrative Appeals Office, received on July 5, 2006, counsel indicates that she will submit a brief and/or evidence within 30 days. On February 16, 2007, the AAO contacted counsel asking for a copy of the brief/evidence. To date, no response has been received. Accordingly, the record of proceeding will be considered to be complete.

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). However, any person who would have acquired automatic citizenship under its provisions prior to its February 27, 2001 effective date 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 the provisions of section 321(a)(3) 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, counsel contends that, pursuant to section 321(a)(3), the applicant acquired U.S. citizenship through the 1994 naturalization of his mother when he was 15 years old as he was a lawful permanent resident residing in his mother's legal custody following her separation from his father.

To have been eligible for automatic citizenship under section 321(a)(3) prior to February 27, 2001, the applicant must establish that his mother and father were legally separated at the time of her naturalization and that he was in his mother's legal custody. As proof of the separation of the applicant's parents, the record offers a June 15, 2005 statement from the applicant's mother in which she attests that she and her husband separated in April 1993 and that the applicant continued to live with her. She states that her husband subsequently lived at another location until they reconciled in April 2002.

The AAO notes the statement provided by the applicant's mother but does not find it sufficient to establish that she and the applicant's father were legally separated prior to the applicant's 18<sup>th</sup> birthday or that the applicant was in her legal custody, as required by section 321(a)(3) of the Act. For immigration purposes, "legal separation" has been clearly defined as a "limited or absolute divorce obtained through judicial proceedings." See *Matter of H*, 3 I&N Dec. 742 (1949) (Quotations omitted). The record, however, contains no evidence that establishes that the applicant's parents sought and received a legal separation under the laws of the state in which they were residing in 1993. Neither does it include a court order that placed the applicant in his mother's custody following her separation from his father. Moreover, the AAO notes that the applicant's mother does not contend that she and the applicant's father were legally separated or that she had legal custody of the applicant, only that she and her husband lived apart from 1993 until 2002 and that the applicant continued to live with her. Therefore, the applicant has not demonstrated that prior to his 18<sup>th</sup> birthday, he was in the legal custody of his mother following her legal separation from his father. As a result, the applicant has not satisfied the requirement at section 321(a)(3) of the Act.

For the reasons previously discussed, the applicant has not established that he is eligible for a certificate of citizenship. Accordingly, the appeal will be dismissed.

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.