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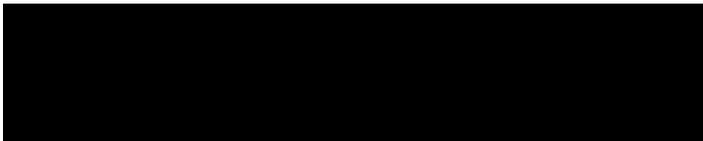
U.S. Department of Homeland Security  
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U.S. Citizenship  
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FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

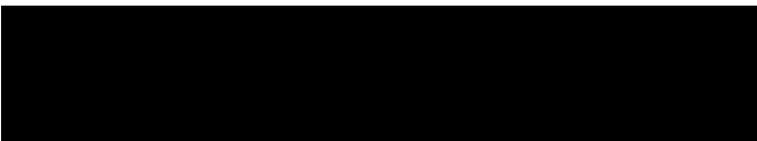
**MAY 21 2007**

IN RE:



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for Certificate of Citizenship pursuant to Section 321(a)(3) of the Nationality Act, 8 U.S.C. § 1432(a)(3), now repealed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 Director, California Service Center and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on June 14, 1973 in the Dominican Republic. The applicant's mother and father were married in the Dominican Republic on February 4, 1979. They subsequently divorced on July 24, 1989 in the State of New York. The applicant's mother, [REDACTED], became a U.S. citizen on June 14, 1991, the date of the applicant's 18<sup>th</sup> birthday. The applicant was admitted to the United States as a lawful permanent resident on December 6, 1981. He seeks a certificate of citizenship under former section 321(a) of the Act, 8 U.S.C. § 1432(a)(3) based on the naturalization of his mother.

The section of law under which the applicant seeks to establish U.S. citizenship was repealed by the Child Citizenship Act of 2000 (CCA), effective as of February 27, 2001.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).

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.

The applicant contends that he automatically acquired U.S. citizenship upon the 1991 naturalization of his mother. The record establishes that at the time of her naturalization, the applicant's mother was divorced from his father and had been awarded legal custody of the applicant and his younger brother in divorce proceedings. The record also indicates that the applicant was admitted to the United States as a lawful permanent resident in 1981, when he was eight years old. Therefore, the only issue before the AAO is whether [REDACTED]'s naturalization occurred prior to the applicant's 18<sup>th</sup> birthday.

The applicant was born on June 14, 1973 and his mother was naturalized 18 years later on June 14, 1991. The applicant asserts that as he was born at 9 PM on June 14, 1973 and [REDACTED] was naturalized at 9AM on

June 14, 1991, she became a U.S. citizen 12 hours before he turned 18 years of age, making him eligible to benefit from section 321(a)(3) of the Act. The applicant's reasoning is not persuasive.

The AAO notes that in computing time to determine an individual's age, the courts have regarded a day as an indivisible unit or period of time, i.e., they have not considered the hour of birth. Moreover the courts have usually ruled that majority is attained the first moment of the day preceding the 21<sup>st</sup> anniversary date of a person's birth. *U.S. v. Wright*, 197 F.297 (1912); *Gibson, Coal and Coke Co. v. Allen*, 280 F.28 (1922); *Taylor v. Aetna L. Ins. Co.*, 49 F.Supp. 990 (1942). In determining whether a person is under 21, 18 or 16 years of age, as required for derivation under the applicable immigration statute, Citizenship and Immigration Services (CIS) takes a view more favorable to the applicant, namely that such ages are attained at 12:01 AM on the 21<sup>st</sup>, 18<sup>th</sup> or 16<sup>th</sup> anniversary of the applicant's birth. See *CIS Interpretation 320.2*; see also *In the Matter of L—M—and C—Y—C—* 4 I&N Dec. 617 (BIA 1952). Accordingly, the applicant may not establish eligibility for a certificate of citizenship based on the claim that at the time of his mother's 9 AM naturalization ceremony, he was 12 hours short of being 18 years of age. On the date of his mother's naturalization, the applicant was already 18 years of age. Therefore, he is not eligible for a certificate of citizenship under former section 321(a)(3) of the Act.

Even if the AAO were to entertain the applicant's reasoning, the record contains insufficient evidence to establish the time at which the applicant was born. The record contains an affidavit sworn by a nurse who states she assisted at the applicant's June 14, 1973 birth and that it took place at 9 PM at the Monsiegnor Nouel Hospital in Palermo. The AAO notes, however, that the record does not include a birth record issued by the Monsiegnor Nouel Hospital that might reliably establish the applicant's time of birth. Neither does the applicant indicate that this document does not exist or is unavailable to him. When relying on an affidavit in lieu of documentary evidence, like a birth certificate, an applicant must demonstrate that the evidence does not exist or cannot be obtained. Further, he or she must submit at least two affidavits attesting to the evidence that would have otherwise been demonstrated by the missing document. See 8 C.F.R. § 103.2(b)(2). Accordingly, the affidavit does not establish that the applicant was born at 9PM on June 14, 1973.

The AAO further finds that the applicant does not 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 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 does not qualify for U.S. citizenship under former section 320 of the Act.

The applicant also fails to qualify 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 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.

As previously discussed, the record indicates that the applicant was already 18 years of age on the date of his mother's naturalization. Accordingly, he is not eligible for a certificate of citizenship under former section 322(a) of the Act. The AAO also 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 present case also fails to meet the requirements set forth in former section 322(b) of the Act.

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

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 petition is denied.