



U.S. Citizenship  
and Immigration  
Services

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**PUBLIC COPY**



*E2*

FILE: [REDACTED] Office: BUFFALO, NY Date: **NOV 27 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:  
[REDACTED]

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 April 18, 1965 in Cuba. He attained the age of 18 on April 18, 1983. The applicant's father became a naturalized U.S. citizen on April 11, 1997, when the applicant was 32 years old. The applicant's mother became a naturalized U.S. citizen on August 5, 1987, when the applicant was 22 years old. The applicant was admitted to the United States as a lawful permanent resident on October 28, 1980, when he was 15 years old. The applicant seeks a certificate of citizenship under section 321 of the former Immigration and Nationality Act (the former Act), 8 U.S.C. § 1432. Alternatively, the applicant claims that he acquired U.S. citizenship at birth through his mother under section 301 of the Act, 8 U.S.C. § 1401.

The district director denied the applicant's claim finding that he was over 18 when his parents naturalized. The district director further found that, even if his mother acquired U.S. citizenship at birth, she lacked the required physical presence in the United States to transmit citizenship to the applicant. The application was denied accordingly.

On appeal, the applicant, through counsel, maintains that he is eligible for benefits under the Child Citizenship Act of 2000 (CCA). Specifically, the applicant claims that his grandfather had the required physical presence pursuant to section 322 of the Act, 8 U.S.C. § 1433, as amended. Alternatively, the applicant claims that he is entitled "retroactively" for citizenship even after attaining the age of 18.

At the outset, the AAO notes that it is well-established that the CCA governs claims of citizenship by applicants who were under the age of 18 on February 27, 2001 (the effective date of the Act). *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). Because the applicant was over the age of 18 on that date, the CCA is inapplicable in the present case.

"The applicable law for transmitting citizenship to a child born abroad when one parent is a U.S. citizen is the statute that was in effect at the time of the child's birth." *Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1029 (9<sup>th</sup> Cir. 2000) (citations omitted). The applicant was born on April 18, 1965. Section 301(a)(7) of the former Act is therefore applicable to his citizenship claim.

Section 301(a)(7) of the former Act states that the following shall be nationals and citizens of the United States at birth:

[A] person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years: *Provided*, That any periods of honorable service in the Armed Forces of the United States by such citizen parent may be included in computing the physical presence requirements of this paragraph.

The record indicates that the applicant's grandfather was born in 1894 in Puerto Rico, and that his mother claims to have acquired U.S. citizenship at birth through him. The applicant's mother submits a sworn statement explaining that she was unaware of her possible claim to U.S. citizenship until her naturalization in 1987. The record does not contain any document evidencing the applicant's mother's citizenship, other than her 1987 certificate of naturalization. The applicant's mother was not physically present in the United States prior to the applicant's birth in 1965. As such, the applicant cannot establish that he acquired U.S. citizenship at birth through his mother.

The AAO finds that the applicant has also failed to establish eligibility for U.S. citizenship under section 321 of the former Act, 8 U.S.C. § 1432, which 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.

8 U.S.C. § 1432. The record reflects that the applicant was over the age of 18 when either of his parents naturalized. Therefore, the AAO finds that the applicant is not eligible for citizenship pursuant to the section 321 of the former Act, 8 U.S.C. § 1432.

The requirements for citizenship, as set forth in the Act, are statutorily mandated by Congress, and that CIS lacks statutory authority to issue a Certificate of Citizenship when an applicant fails to meet the relevant statutory provisions set forth in the Act. A person may only obtain citizenship in strict compliance with the statutory requirements imposed by Congress. *INS v. Pangilinan*, 486 U.S. 875, 885 (1988). Even courts may not use their equitable powers to grant citizenship, and any doubts concerning citizenship are to be resolved in favor of the United States. *Id.* at 883-84; *see also United States v. Manzi*, 276 U.S. 463, 467 (1928) (stating that "citizenship is a high privilege, and when doubts exist concerning a grant of it ... they should be resolved

in favor of the United States and against the claimant"). Moreover, "it has been universally accepted that the burden is on the alien applicant to show his eligibility for citizenship in every respect." *Berenyi v. District Director, INS*, 385 U.S. 630, 637 (1967).

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. The applicant in the present case has not met his burden and the appeal will be dismissed.

**ORDER:** The appeal is dismissed.