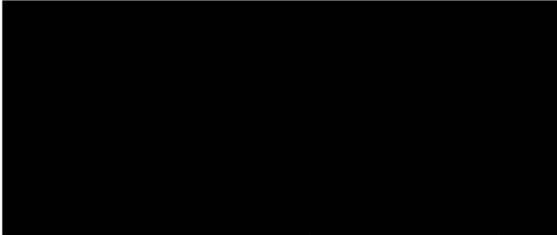




U.S. Citizenship
and Immigration
Services

Identify copy to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY



E₂

FILE: [Redacted] Office: PHILADELPHIA, PA Date: DEC 02 2008

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Application for Certificate of Citizenship pursuant to Section 321(a) of the Nationality Act, 8 U.S.C. § 1432(a), now repealed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

SELF-REPRESENTED

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Philadelphia, Pennsylvania 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 January 5, 1975 in the Dominican Republic. The applicant's father, [REDACTED], and mother, [REDACTED], were, at the time of his birth, citizens of the Dominican Republic and the record does not indicate that either subsequently became U.S. citizens. The applicant's parents married on August 9, 1974. The applicant was admitted into the United States as a lawful permanent resident on May 1, 1992, based on an immigrant visa petition filed by his U.S. citizen stepmother, [REDACTED]. The applicant seeks a certificate of citizenship based on his stepmother's citizenship.

In her decision, the field office director found that, as neither of the applicant's birth parents had become U.S. citizens prior to his 18th birthday, the applicant was ineligible for a certificate of citizenship under former section 321(a) of the Act, 8 U.S.C. § 1432(a). She denied the application accordingly. *Field Office Director's decision*, dated December 5, 2007.

On appeal, the applicant contends that his claim to citizenship should be considered under the law in effect at the time he was born or admitted to the United States as a lawful permanent resident, rather than under former section 321 of the Act. He also cites to the definition of child in section 101(b)(1) of the Act, which, he contends, rebuts the field office director's finding that citizenship may not be transmitted through a stepparent. *Form I-290B*, dated December 20, 2007; *Applicant's Brief*, undated.

The AAO turns first to the applicant's contention that he is eligible for a certificate of citizenship based on his 1992 admission to the United States as the stepson of a U.S. citizen.

The record establishes that the applicant was the beneficiary of a Form I-130, Petition for Alien Relative, filed by his stepmother, [REDACTED], and that he entered the United States as a lawful permanent resident on the basis of this relationship. However, the applicant's 1992 admission to the United States as the child of his U.S. citizen stepmother does not establish her as his parent for the purposes of acquiring U.S. citizenship under Title III of the Act. The applicant's reasoning in this matter has ignored the differing statutory definitions of child found in sections 101(b)(1) and 101(c)(1) of the Act, 8 U.S. C. §§ 1101(b)(1) and (c)(1).

Section 101(b) of the Act states, in pertinent part, that as used in Title I ("General Provisions") and Title II ("Immigration") of the Act:

(1) The term "child" means an unmarried person under twenty-one years of age who is

- (A) a child born in wedlock;
- (B) a stepchild, whether or not born out of wedlock, provided the child had not reached the age of eighteen years at the time the marriage creating the status of stepchild occurred;

- (C) a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile . . . ;
- (D) a child born out of wedlock, by, through whom, or on whose behalf a status, privilege, or benefit is sought by virtue of the relationship of the child to its natural mother or to its natural father . . . ;
- (E) a child adopted while under the age of sixteen years if the child has been in the legal custody of, and has resided with, the adopting parents or parents for at least two years . . . ; or
- (F) a child, under the age of sixteen at the time a petition is filed in his behalf to accord a classification as an immediate relative under section 1151(b) of this title, who is an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents, or for whom the sole or surviving parents is incapable of providing the proper care and has in writing irrevocably released the child for emigration and adoption

This expansive definition of child is not, however, used when determining an applicant's eligibility for U.S. citizenship under Title III of the Act. Pursuant to section 101(c)(1) of the Act, a child under Title III ("Nationality and Naturalization") is defined as:

[A]n unmarried person under twenty-one years of age and includes a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in the United States or elsewhere, and, except as otherwise provided . . . a child adopted in the United States, if such legitimation or adoption takes place before the child reaches the age of 16 years . . . and the child is in the legal custody of the legitimating or adopting parent or parents at the time of such legitimation or adoption.

Based on the definition of child used when adjudicating immigrant visa petitions under Title II of the Act, the applicant was able to benefit from the Form I-130 filed by his U.S. citizen stepmother. The step relationship that brought him to the United States in 1992 as a lawful permanent resident is not, however, recognized for the purposes of Title III derivative citizenship determinations. In that the record fails to indicate that the applicant was formally adopted by his stepmother prior to his 16th birthday, he may not claim her as a U.S. citizen parent for the purposes of acquiring U.S. citizenship under Title III of the Act.

The AAO also observes that as neither the applicant's father or now deceased mother obtained U.S. citizenship prior to his 18th birthday, he is also ineligible for a certificate of citizenship under former section 321(a)¹ of the Act, 8 U.S.C. §§ 1432(a), which requires that a combination of discrete events,

¹ On appeal, the applicant contends that his case should be considered under the immigration law in effect at the time of his birth or admission to the United States as a lawful permanent resident, rather than under former section 321 of the Act. The AAO notes, however, that former section 321 of the Act was the immigration law in effect at the time of the applicant's 1975 birth and his 1992 admission to the United States.

including the naturalization of a parent, occur prior to the applicant turning 18 years of age. Accordingly, there is no section of the Act under which the applicant may acquire U.S. citizenship.

The AAO notes “[t]here must be strict compliance with all the congressionally imposed prerequisites to the acquisition of citizenship.” *Fedorenko v United States*, 449 U.S. 490, 506 (1981). As previously noted, the regulation at 8 C.F.R. § 341.2 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.” See *Matter of E-M-*, 20 I&N Dec. 77 (Comm. 1989). The applicant has not met his burden in this proceeding. The appeal will, therefore, be dismissed.

ORDER: The appeal is dismissed.