



U.S. Citizenship
and Immigration
Services

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FILE:

Office: CALIFORNIA SERVICE CENTER Date:

FEB 01 2008

IN RE:

Applicant:



APPLICATION: Application for Certificate of Citizenship pursuant to Section 321(a)(2) of the Nationality Act, 8 U.S.C. § 1432(a)(2), now repealed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 Director, California Service Center 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 March 16, 1950 in Edinburgh, Scotland. The applicant's father, [REDACTED] became a naturalized U.S. citizen on March 21, 1960, when the applicant was ten years old. The applicant's mother, [REDACTED], is deceased and the record indicates that, at the time of her death, she was a citizen of the United Kingdom. The applicant's parents never married. The applicant was admitted into the United States as a lawful permanent resident on December 8, 1950 when he was nine months old. The applicant seeks a certificate of citizenship based on his father's 1960 naturalization.

In his decision, the director found the applicant to be ineligible for a certificate of citizenship as, under the nationality laws in effect at the time of his father's naturalization, children born out of wedlock could only derive U.S. citizenship through their mothers. Although the director noted that the CAA had eliminated this restriction in 2001, he concluded that the applicant was unable to benefit from the CAA's amendments as he was over the age of 18 on the date the CAA was enacted. He denied the application accordingly. *Director's decision*, dated September 27, 2006.

On appeal, counsel contends that the applicant was legitimated by his father under Washington state law and therefore may apply for a certificate of citizenship. She further asserts that the applicant is eligible for a certificate of citizenship pursuant to section 321(a)(2) or (a)(3) of the Act. *Counsel's Brief*, dated October 24, 2006.

The AAO notes that the derivation of U.S. citizenship through the naturalization of a parent has generally required that a combination of discrete events occur before the applicant reaches a certain age. As a result, the statute that establishes the requirements for a derivative citizenship case is that in effect at the time that the last qualifying event in the case takes place. In the present matter, the last qualifying event is [REDACTED] naturalization on March 21, 1960. Accordingly, the applicant's claim to derivative citizenship is subject to the requirements of former sections 321(a) or 322(a) of the Immigration and Nationality Act of 1952 (the Act), 8 U.S.C. §§ 1432(a) or 1433(a).

Section 321(a)(3) of the Act 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 the provisions of section 321(a)(2) 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.

Former section 322 of the Act, 8 U.S.C. § 1433, 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.

The AAO finds the director to have erred in concluding that the applicant's could not seek derivative citizenship except through his mother. It notes that, under the nationality provisions of the 1952 Act, children born out of wedlock could derive citizenship through their fathers if they were legitimated prior to their 16th birthdays and met the other requirements for derivation. *See* section 101(c) of the Act. In the present matter, the evidence of record establishes that, under Washington state law, the applicant was legitimated by Mr. [REDACTED] prior to his 16th birthday.

[REDACTED] brought the applicant with him to the United States in 1950, listing the applicant as his son on his passport, and reared the applicant in his home in Seattle, Washington, as established by the applicant's school records and a February 18, 2003 letter from [REDACTED], the applicant's stepmother. Prior to 2002, a child born out of wedlock and living in the State of Washington could be legitimated by his or her natural father under section 26.26.040 of the Revised Code of Washington if, as a minor, he or she was received into the father's home and publicly acknowledged as the father's child. *See Burgess v. Meese*, 802 F.2d 338 (9th

Cir. 1986). As the record offers sufficient evidence to demonstrate that the applicant lived with [REDACTED] from the age of nine months and that [REDACTED] acknowledged the applicant as his son, the AAO finds the applicant to have been legitimated prior to his 16th birthday and eligible to apply for a certificate of citizenship under the 1952 Act.

The AAO now turns to a consideration of the applicant's eligibility under sections 321(a)(2) and (a)(3) the Act.

Counsel contends that the applicant is eligible for a certificate of citizenship based on his father's naturalization because his natural mother is deceased. However, as previously noted, the requirement set forth in section 321(a)(2) of the Act must be met prior to the applicant's 18th birthday. The AAO notes that while [REDACTED] naturalization occurred prior to that date, the death of the applicant's natural mother did not. Counsel has indicated that the death of the applicant's natural mother, [REDACTED] occurred in January 2003, when the applicant was 52 years old. Therefore, the applicant may not derive citizenship from his father's naturalization under 321(a)(2) of the Act, because prior to his 18th birthday, his father was not his sole surviving parent.

The applicant is also unable to establish eligibility under section 321(a)(3) of the Act. Although the AAO finds the applicant to have been in the legal custody of [REDACTED] prior to his 18th birthday, that custody did not follow the legal separation of his parents, as they were never married. A legal separation is established by a legal proceeding and parents who were never lawfully married cannot be legally separated. Accordingly, Mr. [REDACTED] custody of the applicant does not meet the requirements of section 321(a)(3). *See Matter of H—*, 3 I&N Dec. 742 (BIA 1949).

The applicant also fails to qualify for U.S. citizenship under former section 322 of the Act. The AAO notes that, whether or not an applicant satisfies 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 Citizenship and Immigration Services (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 matter has not met the requirements set forth in former section 322(b) of the Act. 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 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.