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U.S. Citizenship  
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FILE: [Redacted] Office: TAMPA, FL (ORLANDO) Date: JUL 03 2008

IN RE: Applicant: [Redacted]

APPLICATION: Application for Certificate of Citizenship under Section 321 of the Immigration and Nationality Act; 8 U.S.C. § 1432 (repealed).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 black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Interim District Director, Tampa, Florida, 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 October 26, 1982 in South Korea. The applicant was adopted on March 10, 1987 by [REDACTED] and [REDACTED]. The applicant's mother, [REDACTED], became a U.S. citizen upon her naturalization on February 25, 1987. The applicant was admitted to the United States as a lawful permanent resident on June 30, 1989, on the basis of an approved Form I-130, Petition for Alien Relative, filed on her behalf by her mother.<sup>1</sup> The applicant claims that she acquired U.S. citizenship through her mother and seeks a certificate of citizenship pursuant to section 321 of the former Immigration and Nationality Act (the Act), 8 U.S.C. § 1432 (repealed).

The interim district director denied the application finding that the applicant did not derive U.S. citizenship from her mother because she was adopted, and because her father was a U.S. citizen by birth and not naturalization. The director found the applicant ineligible for citizenship under the Child Citizenship Act of 2000 (CCA) because she was over 18 years old on its effective date. The application was denied accordingly.

The CCA amended sections 320 and 322 of the Act, and repealed section 321 of the former Act. The CCA became effective on February 27, 2001, and is not retroactive. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). The amended provisions of the Act apply only to persons who were not yet 18 years old as of February 27, 2001. Because the applicant was over the age of 18 on February 27, 2001, she is not eligible for the benefits of section 320 or 322 of the amended Act.

"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 in this case was born in 1982. Sections 321 and 322 of the former Act, 8 U.S.C. §§ 1432 and 1433, apply to this case. Because the applicant was adopted, the Act of October 5, 1978, Pub.L. No. 95-417, 92 Stat. 917, also applies to this case.<sup>2</sup>

Section 321 of the former Act 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

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<sup>1</sup> The AAO notes that the Form I-130 indicates that the applicant is the adoptive child of [REDACTED], and is accompanied by an adoption certificate and a statement by the applicant's mother indicating that she was adopted and is not the natural child of [REDACTED].

<sup>2</sup> The Act of October 5, 1978, provided, in relevant part, for the application of sections 320, 321 and 322 of the former Act to a child "adopted while under the age of sixteen years who is residing in the United States at the time of naturalization of such adoptive parent or parents, in the custody of his adoptive parent or parents, pursuant to a lawful admission for permanent residence."

- (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 record contains evidence establishing that the applicant was adopted, and indicating that she is not the natural child of [REDACTED]. Specifically, the AAO notes (1) the applicant's Form I-130, Petition for Alien Relative, indicating that she was adopted by [REDACTED]; (2) the applicant's mother's notarized statement accompanying the Form I-130, wherein she describes having found the applicant "left at the door" of her house and having falsely registered her as her "real child"; and (3) the applicant's adoption certificate, indicating that she was adopted by both [REDACTED] and [REDACTED]. The record does not contain any evidence to establish a biological relationship between the applicant and her adoptive mother. Therefore, the AAO must conclude that the applicant did not derive U.S. citizenship pursuant to section 321(a)(3) of the former Act as the out-of-wedlock child of a naturalizing parent.

The Act of October 5, 1978 allows adopted children to derive U.S. citizenship if they are residing in the United States pursuant to a lawful admission for permanent residence "at the time of naturalization of such adoptive parent." The applicant was not residing in the United States pursuant to a lawful admission for permanent residence at the time of her mother's naturalization in 1987. As noted above, the applicant's adoptive father is a native-born U.S. citizen. Therefore, she did not derive U.S. citizenship pursuant to section 320, 321 or 322 of the former Act, as amended by the Act of October 5, 1978.<sup>3</sup>

It is well established that the requirements for citizenship, as set forth in the Act, are statutorily mandated by Congress, and 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

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<sup>3</sup> The AAO notes that the applicant is also ineligible for U.S. citizenship pursuant to section 322 of the former Act, which requires, among other things, that a certificate of citizenship application be filed, adjudicated, and approved with the oath of allegiance administered before the applicant's 18<sup>th</sup> birthday. The applicant turned 18 years of age on October 26, 2000.

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. 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." *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). The applicant in this case has not met her burden and the appeal will therefore be dismissed.

**ORDER:** The appeal is dismissed.