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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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[REDACTED]

FILE:

[REDACTED]

Office: CHICAGO, IL

Date:

MAY 21 2008

IN RE:

Applicant:

[REDACTED]

APPLICATION:

Application for Certificate of Citizenship under Section 320 of the Immigration and Nationality Act; 8 U.S.C. § 1431.

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, Chicago, Illinois, 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 July 18, 1979 in Canada. The applicant's mother, [REDACTED], is a U.S. citizen born in Illinois on December 12, 1961. The applicant's father, [REDACTED], is not a U.S. citizen. The applicant's parents were married in June 1979, and divorced in March 1982. The applicant's mother was awarded sole custody of the applicant upon the divorce. The applicant presently seeks a certificate of citizenship pursuant to either section 301 or 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1401 or 1431.

The district director denied the applicant's citizenship claim upon finding that he had could not establish that his mother had the required physical presence in the United States to transmit citizenship under section 301 of the Act. The director further found that the applicant did not automatically acquire U.S. citizenship under section 320 of the Act because he was never admitted to the United States as a lawful permanent resident. The application was denied accordingly.

On appeal, the applicant, through counsel, maintains that it is an injustice to require him to establish that his mother was physically present in the United States for five years after the age of 14. *See Applicant's Appeal Memorandum*. He therefore contends that he is eligible for citizenship under section 301 of the Act, 8 U.S.C. § 1401. *Id.* Alternatively, he maintains that he automatically acquired U.S. citizenship upon his parents' divorce in 1982, pursuant to section 320 of the Act, 8 U.S.C. § 1431. *Id.*

The AAO first notes that the Child Citizenship Act of 2000 (CCA), which took effect on February 27, 2001, amended sections 320 and 322 of the Act, and repealed section 321 of the Act. The provisions of the CCA are not retroactive, and the amended provisions of section 320 and 322 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, he is not eligible for the benefits of the amended Act. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001).

"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 (9th Cir. 2000) (citations omitted). The applicant was born on July 18, 1979. Section 301(g) of the former Immigration and Nationality Act (the former Act), 8 U.S.C. § 1401(g), is therefore applicable to his citizenship claim.

Section 301(g) 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

In order to acquire U.S. citizenship under this provision, the applicant must establish that his mother was present in the United States for a period of ten years prior to 1979, at least five of which were after she attained the age of 14 (in 1975). The applicant's mother was 17 when the applicant was born in 1979. She is therefore unable to establish the required physical presence, and the applicant is thus statutorily ineligible for citizenship under 301(g) of the Act, 8 U.S.C. § 1401(g).¹

The applicant suggests that he should be granted U.S. citizenship as a matter of justice or discretion. The AAO notes that its appellate jurisdiction is limited, and that it has no jurisdiction outside of the matters listed in the regulations at 8 C.F.R. § 103.1(f)(3)(iii) (2003) and 8 C.F.R. § 2.1 (2004). The AAO further notes that 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).

The applicant's mother was not physically present in the United States for the required five years after attaining the age of 14, and prior to the applicant's birth. Therefore, the AAO must conclude that the applicant did not acquire U.S. citizenship through his mother and the appeal will be dismissed.

ORDER: The appeal is dismissed.

¹ The AAO notes that the applicant is not eligible to derive citizenship pursuant to section 321 of the former Act, 8 U.S.C. § 1432 (repealed), because he was not admitted to the United States as a lawful permanent resident prior to his 18th birthday.