

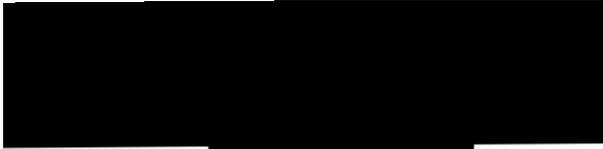


U.S. Citizenship
and Immigration
Services

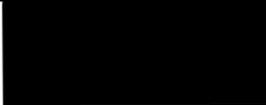
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FILE:



Office: NEW YORK, NY

Date: **MAY 21 2008**

IN RE:

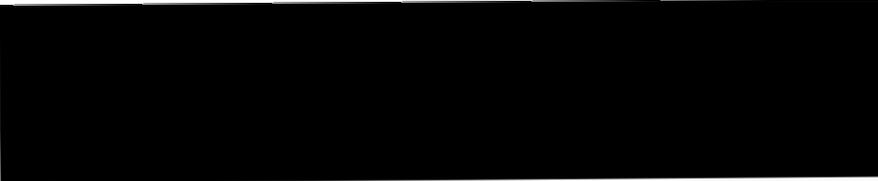
Applicant:



APPLICATION:

Application for Certificate of Citizenship under Section 322 of the Immigration and Nationality Act; 8 U.S.C. §1433.

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 District Director, New York, 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 November 17, 1975 in the Dominican Republic. The applicant's parents are [REDACTED] and [REDACTED]. The applicant's parents were divorced on May 18, 1987. The applicant's mother was awarded custody of the applicant upon the divorce. The applicant had become a lawful permanent resident of the United States on January 11, 1984. His father naturalized on August 11, 1982, when the applicant was 6 years old. The applicant's mother naturalized on June 29, 1999, when the applicant was 23 years old. The applicant seeks a certificate of citizenship pursuant to section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433, based on the claim that he acquired U.S. citizenship through his father.

The district director concluded that the applicant had failed to establish eligibility for citizenship under section 320 of the Act, 8 U.S.C. § 1431, because he was ineligible for benefits under the Child Citizenship Act of 2000 (CCA). The director further found that the applicant had not derived citizenship under section 321 of the former Act, 8 U.S.C. § 1432 (repealed), because he was not in his father's legal custody upon his naturalization. The application was denied accordingly.

On appeal, the applicant, through counsel, argues that he is eligible for citizenship under section 322 of the Act, 8 U.S.C. § 1433. The applicant maintains that he was in the legal custody of his father after his admission to the United States in 1984 and before his parents' divorce.

The CCA amended sections 320 and 322 of the Act, and repealed section 321 of the former Act. The CCA is not retroactive. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). The provisions of the Act amended by the CCA 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 section 320 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 (9th Cir. 2000) (citations omitted). The applicant in this case was born in 1975. Therefore, sections 321 and 322 of the former Act apply to this case.

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

(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 AAO finds that the applicant did not derive citizenship under section 321 of the former Act because his parents were still married when his father was naturalized, and his mother was awarded legal custody of him upon their divorce in 1987. The applicant therefore did not meet the requirements of section 321(a)(1) or (3) of the former Act.

Section 322 of the former Act provided, in pertinent part, that:

(a) Application of citizen parents; requirements

A parent who is a citizen of the United States may apply to the Attorney General [now the Secretary of 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) Attainment of citizenship status; receipt of certificate

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 record in this case reflects that the applicant reached the age of 18 on November 17, 2003. His application for a certificate of citizenship was filed on or about February 16, 2006, when the applicant was 20 years old. Section 322(a)(3) of the former Act, 8 U.S.C. § 1433(a)(3), and the regulations promulgated thereunder, require that a certificate of citizenship application be filed, adjudicated, and approved with the oath of allegiance administered before the child's 18th birthday. The applicant is over the age of 18. The AAO therefore finds that the applicant is ineligible for citizenship under the cited provision because he is already 18.

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).

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). Given the fact that the applicant reached the age of 18 prior to the filing and adjudication of his application, he failed to meet his burden of proof and is not eligible for citizenship under section 322 of the former Act, 8 U.S.C. § 1431.

The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.