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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: NEW YORK, NY Date: APR 22 2004

IN RE: Applicant [redacted]

APPLICATION: Application for Certificate of Citizenship pursuant to section 341 of the Act, 8 U.S.C. § 1452.

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.

Robert P. Wiemann, Director
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 applicant was born on October 3, 1980, in Georgetown, Guyana. The record reflects that the applicant's father was born in Guyana on June 6, 1949, and that he became a naturalized U.S. citizen on February 11, 1982. The applicant's mother was born in Guyana on August 7, 1950, and is not a U.S. citizen. The applicant was admitted into the United States as a lawful permanent resident on July 31, 1990, when he was 10 years old. The applicant seeks a certificate of citizenship pursuant to section 341 of the Act, 8 U.S.C. § 1452.[1]

The district director concluded that the applicant was ineligible for a certificate of citizenship pursuant to section 320 of the Act because he was over the age of eighteen on February 27, 2001, when section 320 of the Act, as amended by the Child citizenship Act of 2000, went into effect. The application was denied accordingly.

On appeal, the applicant asserts that he filed his certificate of citizenship application in 1997, prior to his 18th birthday and that he should not be penalized for having turned eighteen prior to the passage of section 320 amendments to the Immigration and Nationality Act.

The Child Citizenship Act of 2000 (CCA) repealed section 321, and amended sections 320 and 322, of the former Act as of February 27, 2001. The amended section 320 of the Act allows a child born outside of the U.S. to automatically become a citizen of the United States upon fulfillment of the following conditions:

> (1) At least one parent of the child is a citizen of the United States, whether by birth or naturalization.
> (2) The child is under the age of eighteen years.
> (3) The child is residing in the United States in the legal and physical custody of the citizen parent pursuant to a lawful admission for permanent residence.

The AAO notes that the provisions of the CCA are not retroactive, and that the amended provisions of section 320 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, the district director correctly determined that he was not eligible for the benefits of section 320 of the amended Act. *See Matter of Rodriguez-Tejedor,* 23 I&N Dec. 153 (BIA 2001).

Nevertheless, the AAO finds that the district director should also have examined the applicant's claim to citizenship pursuant to the automatic child citizenship provisions that were in place prior to February 27, 2001. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001).

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[1] Section. 341 of the Act is a procedural provision which states in pertinent part:

> (a) A person who claims to have derived United States citizenship through the naturalization of a parent . . . may apply to the Attorney General [now Secretary, Homeland Security, "Secretary"] for a certificate of citizenship. Upon proof to the satisfaction of the Attorney General [Secretary] that the applicant is a citizen, and that the applicant's alleged citizenship was derived as claimed, or acquired, as the case may be, and upon taking and subscribing before a member of the Service within the United States to the oath of allegiance required by this Act of an applicant for naturalization, such individual shall be furnished by the Attorney General [Secretary] with a certificate of citizenship, but only if such individual is at the time within the United States.

Section 322 of the former Act, in effect prior to the amendments of the CCA, stated, in pertinent part:

(a) Application of citizen parents; requirements

A parent who is a citizen of the United States may apply to the Attorney General [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 AAO notes that, whether or not an applicant satisfies the requirements set forth in section 322(a) of the former Act, under section 322(b) of the Act, an applicant must also establish that the application for U.S. citizenship was approved by the Service prior to the applicant's 18th birthday. The applicant must additionally take an oath of allegiance prior to turning 18. The AAO notes further that the requirements set forth in section 322(b) of the former Act are statutorily mandated, and that they are not changed due to Citizenship and Immigration Services processing delays. The applicant in the present case failed to meet the requirements set forth in section 322(b) of the former Act because the Service did not adjudicate or approve his certificate of citizenship application before he turned 18, and because the applicant did not take an oath of allegiance prior to his 18th birthday.

The AAO additionally finds that the applicant fails to qualify for a certificate of U.S. citizenship pursuant to section 320 of the former Act, in effect prior to the amendments of the CCA.

Section 320 of the former Act stated in pertinent part that:

(a) A child born outside of the United States, one of whose parents at the time of the child's birth was an alien and the other of whose parents then was and never thereafter ceased to be a citizen of the United States, shall, if such parent is naturalized, become a citizen of the United States, when

(1) such naturalization takes place while such child is under the age of 18 years; and

> (2) such child is residing in the United States pursuant to a lawful admission for permanent residence at the time of naturalization or thereafter and begins to reside permanently in the United States while under the age of 18 years.

Neither of the applicant's parents was a U.S. citizen at the time of his birth. The applicant therefore does not qualify for consideration under section 320 of the former Act.

The AAO finds that the applicant also does not qualify for a certificate of citizenship pursuant to section 321 of the former Act, which 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 applicant failed to establish that his mother is a naturalized U.S. citizen or that she became deceased prior to his 18th birthday. Furthermore, the record reflects that the applicant's parents did not marry. It is therefore not possible for the applicant to establish that his father obtained legal custody pursuant to a legal separation between his parents.

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 this case, the burden has not been met and the appeal will be dismissed.

ORDER: The appeal is dismissed.