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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

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

IN RE: Applica[redacted]

APPLICATION: Application for Certificate of Citizenship pursuant to section 321 of the Act, 8 U.S.C. § 1432.

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 sustained.

The applicant was born on May 25, 1982, in Beirut, Lebanon. The record reflects that the applicant's father, was born in Syria on April 24, 1947, and that he became a naturalized U.S. citizen on April 16, 1991. The applicant's mother was born in Lebanon and is not a U.S. citizen. The applicant was admitted into the United States as a lawful permanent resident on August 10, 1998. The applicant seeks a certificate of citizenship pursuant to section 321 of the former Immigration and Nationality Act (former Act), 8 U.S.C. § 1432.

The district director concluded the applicant had failed to establish that he resided in the physical custody of his father while he was under the age of eighteen, as required by section 320 of the Immigration and Nationality Act (the Act). The application was denied accordingly.

On appeal, the applicant asserts that he entered the United States as a lawful permanent resident in 1998, while he was under the age of eighteen and after his father became a naturalized U.S. citizen. The applicant asserts that he qualified for U.S. citizenship at the time of his entry into the United States and that amended section 320 provisions were erroneously applied in his case.

The Child Citizenship Act of 2000 (CCA) repealed section 321, and amended section 320 of the former Act as of February 27, 2001. The amended section 320 of the Act presently 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 eighteen years old as of February 27, 2001. The applicant was over the age of 18, on February 27, 2001. Moreover, the applicant failed to establish that subsequent to his entry into the U.S., he resided in the physical custody of his U.S. citizen father. The district director therefore correctly found that the applicant 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 notes that all persons who acquired citizenship automatically under section 321 of the former Act, as previously in force 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). The district director therefore, should have examined the applicant's claim to U.S. citizenship pursuant to the automatic citizenship provisions set forth in section 321 of the former Act.

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 applicant failed to establish that his mother is a naturalized U.S. citizen or that she became deceased prior to his 18th birthday. However, the evidence in the record establishes that the applicant meets the requirements set forth in subsections (3), (4) and (5) of section 321 of the former Act. The record contains evidence establishing that the applicant's parents divorced in Beirut, Lebanon, on September 16, 1986. Although the 1986, divorce decree contains no child custody information, a subsequent Beirut Court Decree issued on February 22, 1995, when the applicant was 12 years old, states that the Beirut Court recognized the applicant's father as the applicant's legal guardian. The record reflects further that the applicant's father became a naturalized U.S. citizen in 1991, when the applicant was 8 years old. The record additionally reflects that the applicant was admitted into the U.S. at the age of 16, pursuant to a lawful admission for permanent residence on August 10, 1998, and that the applicant resided permanently in the U.S. while under the age of 18 years.

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. The AAO finds that the applicant has established that he meets the requirements for automatic U.S. citizenship under section 321 of the former Act. The appeal will therefore be sustained.

ORDER: The appeal is sustained.