**U.S. Department of Homeland Security**
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Washington, DC 20529

**U.S. Citizenship and Immigration Services**

[redacted]

FILE: [redacted] Office: NEWARK, NEW JERSEY Date: AUG 26 2004

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship.

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

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identifying data deleted to prevent clearly unwarranted invasion of personal privacy

**DISCUSSION**: The application was denied by the District Director, Newark, New Jersey, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant was born on August 24, 1982, in The applicant's mother, was born in on March 26, 1959, and she became a naturalized U.S. citizen on August 27, 1999, when the applicant was seventeen years old. The applicant's father was born in and he became a naturalized U.S. citizen on August 16, 2000, when the applicant was seventeen years old. The applicant was admitted into the United States as a lawful permanent resident on February 27, 1992, when he was nine years old. The applicant seeks a certificate of citizenship pursuant to section 320 of the amended Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The district director concluded that the applicant was statutorily ineligible for a certificate of citizenship under section 322 of the former Immigration and Nationality Act (the former Act), 8 U.S.C. § 1433, because he turned eighteen years old prior to final adjudication of his application. The application was denied accordingly.

On appeal, the applicant, through his mother, asserts that the district director erroneously applied section 322 of the Act provisions to the applicant's case, and that instead, the applicant qualifies for citizenship pursuant to pursuant to section 320 of the amended Act.

Sections 320 and 322 of the former Act were amended by the Child Citizenship Act of 2000 (CCA), which took effect on February 27, 2001, and section 321 of the former Act, 8 U.S.C. § 1432, was repealed. Section 320 of the Act, as amended, permits 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 legal precedent decisions have clearly stated that the provisions of the CCA are not retroactive and that the amended provisions of the Act apply only to persons who were not yet eighteen years old as of February 27, 2001. Because the applicant was over the age of eighteen on February 27, 2001, the AAO finds that he is not eligible for the benefits of section 320 of the amended Act. *See Matter of Rodriguez-Tejedor,* 23 I&N Dec. 153 (BIA 2001).

The AAO notes further that the applicant does not qualify for citizenship pursuant to section 320 of the former Act, 8 U.S.C. § 1431. Former section 320 of the Act provided 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 were U.S. citizens at the time of his birth. The applicant therefore does not qualify for U.S. citizenship under section 320 of the former Act.

The applicant also fails to qualify for U.S. citizenship under section 322 of the former Act. Section 322 of the former Act provided, in pertinent part, that:

(a) A parent who is a citizen of the United States may apply to the Attorney General [now the Secretary, 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) 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, section 322(b) of the Act requires that an applicant also establish his or her application for citizenship was approved by Citizenship and Immigration Service (CIS) prior to the applicant's eighteenth birthday, and that the applicant took an oath of allegiance prior to turning eighteen. The AAO finds that the applicant in the present case did not meet the requirements set forth in section 322(b) of the former Act, because CIS did not approve his certificate of citizenship application before he turned eighteen, and because the applicant did not take an oath of allegiance prior to his eighteenth birthday.

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, supra.*

Former section 321 of the 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 record reflects that both of the applicant's parents became naturalized citizens prior to his eighteenth birthday, and that the applicant's parents are not legally separated or deceased. The record additionally reflects that the applicant was admitted into the United States pursuant to a lawful admission for permanent residence on February 27, 1992, when he was nine years old, and that he has resided in the U.S. since that time. Accordingly, the AAO finds that the applicant meets the requirements for U.S. citizenship pursuant to section 321 of the former Act, and the appeal will be sustained.

**ORDER:** The appeal is sustained.