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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

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Date: JAN 11 2012 Office: HARTFORD, CT FILE: [redacted]

IN RE: [redacted]

APPLICATION: Application for Certificate of Citizenship under former section 321 of the Immigration and Nationality Act, 8 U.S.C. § 1432

ON BEHALF OF APPLICANT: Self-represented

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Application for Certificate of Citizenship (Form N-600) was denied by the Field Office Director, Hartford, Connecticut, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born in Jamaica on [redacted] the applicant was adopted in [redacted] The applicant's adoptive mother became a naturalized U.S. citizen [redacted] the applicant was admitted to the United States as a lawful permanent resident. The applicant seeks a Certificate of Citizenship under former section 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432, claiming that he derived citizenship through his adoptive mother.

The director determined that the applicant failed to establish eligibility for derivative citizenship under former section 321 of the Act because he was not a lawful permanent resident at the time his adoptive mother naturalized. *See Decision of the Director*, dated September 15, 2011. The director also determined that the applicant was not eligible for citizenship under any other provision of the Act, and denied the application accordingly. *Id.* On appeal, the applicant contends that he filed an application for citizenship while he was under the age of eighteen years immediately following his admission to the United States as a lawful permanent resident and, as such, he fulfilled the requirements for citizenship because his adoptive mother naturalized prior his eighteenth birthday. *See Form I-290B, Notice of Appeal*, dated October 11, 2011. The applicant indicated that he would forward a brief and/or additional evidence within thirty days. To date, over three months later, the AAO has received nothing further from the applicant.

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Because the applicant was born abroad, he is presumed to be an alien and bears the burden of establishing his claim to U.S. citizenship by a preponderance of credible evidence. *See Matter of Baires-Larios*, 24 I&N Dec. 467, 468 (BIA 2008).

The applicable law for derivative citizenship purposes is that in effect at the time the critical events giving rise to eligibility occurred. *Minasyan v. Gonzales*, 401 F.3d 1069, 1075 (9th Cir. 2005); *accord Jordon v. Attorney General*, 424 F.3d 320, 328 (3d Cir. 2005). Here, the director correctly determined that section 320 of the Act, 8 U.S.C. § 1431, as amended by the Child Citizenship Act of 2000 (CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), is inapplicable to this case because the applicant was over 18 years old on the effective date of the CCA. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). The director also correctly determined that section 322 of the Act, 8 U.S.C. § 1433, is inapplicable to this case because the applicant reached his eighteenth birthday [redacted][1] Former section 321 of the Act, in effect at the time the applicant became a lawful permanent resident in 1994, is applicable in this case.

Former section 321 of the Act provided, in pertinent part:

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[1] Sections 322(a)(3) and (b) of the Act, and the regulation at 8 C.F.R. §322.2(a)(3), require that a certificate of citizenship application be filed, adjudicated, and approved with the oath of allegiance administered before the child's eighteenth birthday. Accordingly, the applicant is statutorily ineligible for a certificate of citizenship under these provisions because he is already over 18 years old.

(a) A child born outside of the United States of alien parents . . . 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 such child is unmarried and under the age of eighteen 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 (1) of this subsection, or the parent naturalized under clause (2) or (3) of this subsection, or thereafter begins to reside permanently in the United States while under the age of eighteen years.

(b) Subsection (a) of this section shall apply to an adopted child only if the child is residing in the United States at the time of naturalization of such adoptive parent or parents, in the custody of his adoptive parent or parents, pursuant to a lawful admission for permanent residence.

Here, the director correctly determined that the applicant did not satisfy the requirements of former section 321(b) of the Act because he was not "residing in the United States . . . pursuant to a lawful admission for permanent residence" at the time of his adoptive mother's naturalization. Former section 321(b) of the Act; *see also Smart v. Ashcroft*, 401 F.3d 119, 121 (2d Cir. 2005) (recognizing that foreign-born adopted children must satisfy the relevant statutory requirements before the naturalization of the adoptive parent). Accordingly, the applicant did not derive citizenship from his adoptive mother.

The applicant bears the burden of proof to establish his eligibility for citizenship under the Act. Section 341 of the Act, 8 U.S.C. § 1452; 8 C.F.R. § 341.2(c). Here, the applicant has not established by a preponderance of the credible evidence that he is eligible for derivative citizenship pursuant to former section 321 of the Act. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.