



U.S. Citizenship
and Immigration
Services

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FILE:

Office: LOS ANGELES, CA

Date: JUN 08 2007

IN RE:

Applicant:

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

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, Los Angeles, California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the application denied.

The record reflects that the applicant was born on May 29, 1980, in Belize. He turned eighteen on May 29, 1998. The applicant's parents were married on August 25, 1979. The applicant's mother became a naturalized U.S. citizen on September 25, 1996, when the applicant was sixteen years old. The applicant's father became a naturalized U.S. citizen on March 15, 2002, when the applicant was twenty-one years old. The applicant was admitted into the United States as a lawful permanent resident on August 27, 1992, when he was twelve years old. He presently seeks a certificate of citizenship pursuant to section 321 of the former Immigration and Nationality Act (the former Act), 8 U.S.C. § 1432.

The district director determined that the applicant was ineligible for a certificate of citizenship under section 321 of the former Act because he failed to establish that his parents had obtained a legal separation as required by section 321(a)(3) of the former Act. The district director additionally determined that the applicant did not qualify for a certificate of citizenship under section 320 of the Immigration and Nationality Act, as amended (the Act), 8 U.S.C. § 1431, because the applicant was over the age of eighteen when the provision went into effect on February 27, 2001. The application was denied accordingly.

On appeal the applicant asserts, through counsel, that although his mother () was married to the applicant's father when the applicant turned eighteen on May 29, 1998, () was separated from the applicant's father at the time of her naturalization as a U.S. citizen on September 25, 1996. The applicant submits copies of () 1990-1996, U.S. Federal Income Tax returns, and states that the fact that () filed as Head of Household and did not list the applicant's father in the tax returns establishes that () was separated from the applicant's father between 1990 and 1996. On this basis the applicant concludes, through counsel, that he satisfied the legal separation requirement set forth in section 321(a)(3) of the former Act.

The AAO notes that section 320 of the former Act, 8 U.S.C. § 1431, was amended by the Child Citizenship Act of 2000 (CCA), and took effect on February 27, 2001. The provisions of the CCA are not retroactive and section 320 of the Act, as amended applies only to persons who were not yet eighteen years old as of February 27, 2001. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). Because the applicant was over the age of eighteen on February 27, 2001, he is not eligible for consideration under section 320 of the Act.¹

¹ Section 320 of the Act, as amended provides in pertinent part that:

- (a) A child born outside of the United States automatically becomes a citizen of the United States when all of the following conditions have been fulfilled:
 - (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 CCA repealed section 321 of the former Act. Nevertheless, 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.*

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's mother became a naturalized U.S. citizen on September 25, 1996, and his father became a naturalized U.S. citizen on March 15, 2002. Although the record reflects that both of the applicant's parents became naturalized U.S. citizens, only the applicant's mother became naturalized prior to the applicant's eighteenth birthday. Accordingly, the applicant does not meet the requirement set forth in section 321(a)(1) of the former Act. The evidence in the record additionally demonstrates that the applicant's father was not deceased prior to [REDACTED]'s naturalization as a U.S. citizen. The requirement set forth in section 321(a)(2) of the former Act has thus also not been met.

The AAO finds that the applicant has additionally failed to establish that his mother was legally separated from his father at the time of her naturalization as a U.S. citizen, as required by section 321(a)(3) of the former Act. The Board of Immigration Appeals stated clearly in *Matter of H*, 3 I&N Dec. 742 (1949), that "legal separation" means either a limited or absolute divorce obtained through judicial proceedings. In the present matter, the record contains a marriage license reflecting that the applicant's parents were married on August 25, 1979, and [REDACTED] Certificate of Naturalization states that she is married. Although the federal tax return information submitted by the applicant suggests that [REDACTED] may have lived separately from her husband between 1990 and 1996, the record contains no evidence to indicate or establish that the applicant's mother initiated or obtained a limited or absolute divorce through judicial proceedings. Accordingly, the applicant failed to establish that his mother was legally separated from his father at the time of her naturalization as a U.S. citizen or prior to the applicant's eighteenth birthday. The applicant therefore failed to satisfy the requirements set forth in section 321(a)(3) of the former Act.

The regulation provides at 8 C.F.R. § 341.2(c), that the burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. In the present matter, the applicant has failed to meet his burden of establishing that he qualifies for U.S. citizenship under section 321 of the former Act or under section 320 of the Act, as amended. The appeal will therefore be dismissed and the application denied.

ORDER: The appeal is dismissed. The application is denied.