U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

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FILE: [redacted] Office: NEW YORK, NY Date: JAN 04 2008

IN RE: Applicant: [redacted]

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:

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.

Ellen C. Johnson

Robert P. Wiemann, Chief
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 record reflects that the applicant was born on January 10, 1982 in Colombia. The applicant's mother, [redacted] became a U.S. citizen upon her naturalization on August 2, 1996, when the applicant was 14 years old. The applicant's father, [redacted], is a native of Colombia. The applicant was born out of wedlock. She was admitted to the United States as a lawful permanent resident on April 21, 1989, on the basis of a petition for immigrant relative filed by her step-father. The applicant presently seeks a certificate of citizenship claiming that she derived U.S. citizenship upon her mother's naturalization.[1]

The district director, upon finding that the applicant had already reached the age of 18, concluded that she was ineligible for citizenship under section 322 of the former Immigration and Nationality Act (the former Act), 8 U.S.C. § 1433. The district director further found the applicant ineligible for citizenship under section 321 of the former Act, 8 U.S.C. §1432, because she had been legitimated by her father. The application was accordingly denied.

On appeal, the applicant contends that she was under 18 when she filed her application and that the application should have been processed before her 18th birthday. *See* Statement of the Applicant on Form I-290B, Notice of Appeal.

"The applicable law for transmitting citizenship to a child born abroad when one parent is a U.S. citizen is the statute that was in effect at the time of the child's birth." *Chau v. Immigration and Naturalization Service,* 247 F.3d 1026, 1029 (9th Cir. 2000) (citations omitted). The applicant in this case was born in 1982. Sections 321 and 322 of the former Act, 8 U.S.C. §§ 1432 and 1433, are the applicable law in this case.[2]

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

[1] The AAO notes that the applicant has obtained a U.S. passport. In accordance with *Matter of Villanueva,* 19 I&N Dec. 101 (BIA 1984), a valid U.S. passport is conclusive proof of a person's U.S. citizenship and may not be collaterally attacked.

[2] The Child Citizenship Act of 2000 amended sections 320 and 322 of the Act, 8 U.S.C. §§ 1431 and 1433, and repealed section 321 of the Act, 8 U.S.C. § 1432. Section 322 of the Act was amended by the Child Citizenship Act of 2000 (CCA), and took effect on February 27, 2001. The CCA benefits all persons who had not yet reached their 18th birthdays as of February 27, 2001. *See Matter of Rodriguez-Tejedor,* 23 I&N Dec. 153 (BIA 2001). Because the applicant was over 18 years of age on February 27, 2001, she does not meet the age requirement for benefits under the CCA.

> (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 indicates that the applicant's mother became a U.S. citizen upon her naturalization in 1996, when the applicant was 14 years old. The applicant's parents were never married, but the applicant's father's name appears in her birth certificate. Colombian Law No. 29, as of March 9, 1982, eliminated all legal distinctions between legitimate and illegitimate children. *See Matter of Hernandez*, 19 I&N Dec. 14 (BIA 1983). It appears that the applicant was deemed legitimate by operation of law on March 9, 1982. The question remains whether the applicant was in her father's legal custody when the "legitimation" took place, as required by section 101(c) of the Act, 8 U.S.C. § 1101(c).[3] There is no evidence suggesting that the applicant was in her father's legal custody. Therefore, the AAO concludes that the applicant's paternity was not established by legitimation.[4] The applicant thus derived U.S. citizenship upon her mother's naturalization because she was an out of wedlock child whose paternity was not established by legitimation.

Having found that the applicant derived U.S. citizenship under section 321 of the former Act, 8 U.S.C. § 1432, the AAO need not address her eligibility for citizenship under section 322 of the former Act, 8 U.S.C. § 1433.

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 order to meet this burden, the applicant must submit relevant, probative and credible evidence to establish that the claim is "probably true" or "more likely than not." *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). The applicant in this case has met her burden, and the appeal will therefore be sustained.

ORDER: The appeal is sustained.

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[3] Section 101(c) of the Act, 8 U.S.C. § 1101(c) states, in pertinent part, that for Title III naturalization and citizenship purposes:

> The term "child" means an unmarried person under twenty-one years of age and includes a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in the United States or elsewhere . . . if such legitimation . . . takes place before the child reaches the age of 16 years . . . and the child is in the legal custody of the legitimating . . . parent or parents at the time of such legitimation.

[4] The AAO notes further that the applicant was not legitimated under the law of her residence (New York). *See Matter of Patrick*, 19 I.&N. Dec. 726 (BIA 1988) (requiring marriage of biological parents for finding of legitimation in New York).