

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

Er



FILE:

Office: CHICAGO, IL

Date:

MAY 21 2008

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:

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, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on January 8, 1966 in Poland. The applicant's parents are [REDACTED] and [REDACTED]. They were married in 1958. The applicant's father became a U.S. citizen upon his naturalization on February 22, 2006, when the applicant was 40 years old. The applicant's mother naturalized on November 17, 2005, when the applicant was 39 years old. The applicant was admitted to the United States as a lawful permanent resident on June 9, 1986, when he was 20 years old. The applicant seeks a certificate of citizenship pursuant to section 321 of the former Immigration and Nationality Act (the former Act), 8 U.S.C. § 1432 (repealed) claiming that he derived citizenship upon his parents' naturalization.

The district director denied the applicant's citizenship claim finding that he did not derive U.S. citizenship because he was over the age of 18 when his parents naturalized, and when he obtained lawful permanent residency. This appeal followed.

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 AAO notes the Child Citizenship Act of 2000 (CCA) amended sections 320 and 322, and repealed section 321, of the Act. The provisions of the CCA, however, are not retroactive. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). The effective date of the CCA was February 27, 2001, and the CCA applies only to children who were under the age of 18 on that day. *Id.* 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 the CCA.

The AAO further finds that the applicant did not derive U.S. citizenship pursuant to section 321 of the former Act because he was over the age of 18 when his parents naturalized. The applicant does not meet the requirement set forth in section 321(a)(4) of the former Act, 8 U.S.C. § 1432(a)(4), which requires that the applicant be under 18 at the time of his parents' naturalization.

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 the present case has not met his burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.