



U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE: [REDACTED] Office: MIAMI, FL Date: **JAN 15 2010**

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under Sections 320 and 322 of the former Immigration and Nationality Act; 8 U.S.C. §§ 1431 and 1433 (1970).

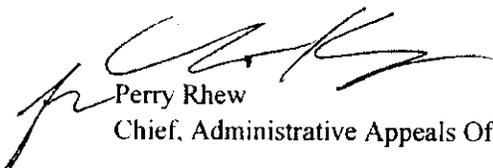
ON BEHALF OF APPLICANT:

[REDACTED]

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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 \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The application was denied by the Field Office Director, Miami, Florida, 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 18, 1970 in Ecuador. The applicant was adopted by [REDACTED] and [REDACTED] in 1972. The applicant's adoptive parents were married in 1971. His adoptive father became a U.S. citizen upon his naturalization on September 4, 1970. His adoptive mother is not a U.S. citizen. The applicant was admitted to the United States as a lawful permanent resident on December 8, 1987. He claims that he acquired U.S. citizenship through his adoptive father.

The field office director determined that the applicant was ineligible for U.S. citizenship under either section 320 or section 322 of the former Immigration and Nationality Act (the former Act), 8 U.S.C. §§ 1431 or 1433. The director concluded that the applicant did not acquire U.S. citizenship because he was over the age of 18 years old. The director also noted that the applicant did not qualify for citizenship under the Child Citizenship Act of 2000 (CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), which took effect on February 27, 2001.

On appeal, counsel maintains that the director "was wrong." See Statement of the Applicant on Form I-290B, Notice of Appeal to the AAO. The appeal is accompanied by a brief where counsel asserts that the applicant's biological mother married his adoptive father, that he was admitted as a lawful permanent resident in 1973, and that his failure to file his application prior to his 18<sup>th</sup> birthday does not preclude him from obtaining a certificate of citizenship. See Applicant's Appellate Brief.<sup>1</sup>

The AAO notes that "[t]he 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 (9<sup>th</sup> Cir. 2000) (citations omitted). The applicant was born on 1970. Sections 320 and 322 of the former Act, 8 U.S.C. §§ 1431 and 1433 (1970), are therefore applicable to this case.<sup>2</sup>

At the outset, the AAO notes that the applicant did not acquire U.S. citizenship at birth pursuant to section 301(a)(7) of the former Act, 8 U.S.C. § 1401(a)(7) (1970), because he is not the biological child of a U.S. citizen.<sup>3</sup>

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<sup>1</sup> The AAO notes that the record contains the applicant's adoption documents which clearly establish that he was adopted by both [REDACTED] and [REDACTED]. The record also contains a copy of the applicant's immigration documentation, which establishes his 1987 date of admission as a lawful permanent resident.

<sup>2</sup> The AAO notes that sections 320, 321 and 322 of the former Act were first amended by the Act of Oct. 5, 1978, Pub. L. [REDACTED] 2 Stat. 1611, to allow derivation upon the naturalization of adoptive parents. Sections 320 and 322 were further amended, and section 321 was repealed, by the CCA in 2000. The CCA took effect on February 27, 2001, but its provisions are not retroactive. CCA § 104. The amended provisions of the Act apply only to persons who were not yet eighteen years old as of February 27, 2001. *Id.*; see also *Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). Because the applicant was over the age of 18 on February 27, 2001, the AAO finds that he is not eligible for the benefits of sections 320 or 322 of the amended Act.

<sup>3</sup> Section 301(a)(7) provides that the following shall be nationals and citizens of the United States at birth:

The AAO also finds that the applicant did not acquire U.S. citizenship under sections 320 or 321 of the former Act, 8 U.S.C. §§ 1431 and 1432, as previously in force prior to February 27, 2001. Sections 320(b) of the former Act, 8 U.S.C. § 1431(b), provided for acquisition of U.S. citizenship from an adoptive parent “only if the child is residing in the United States at the time of naturalization of such adoptive parent, in the custody of his adoptive parents, pursuant to a lawful admission for permanent residence.” The applicant’s father naturalized in 1970. The applicant was adopted in 1972 and obtained lawful permanent resident status in 1987. The applicant was not residing in his adoptive father’s custody at the time of his naturalization (in 1970).

The AAO further notes that section 321 of the former Act, 8 U.S.C. § 1432 (1970), requires, among other things, the naturalization of both parents prior to the applicant’s 18<sup>th</sup> birthday. As previously noted, the applicant’s adoptive mother is not a U.S. citizen. Section 321(b), 8 U.S.C. § 1432(b), like section 320, *supra*, also requires that an adoptive child be in his adoptive parent’s custody at the time of naturalization. *See Smart v. Ashcroft*, 401 F3d 119, 123 (2d Cir. 2005) (“[i]t is rational for Congress to view co-habitation at the time of naturalization as an indication that a bond exists between the adopting parents and their child (and concomitantly between the child and the United States) and therefore to mandate it as an additional prerequisite to granting derivative citizenship to that child”). The applicant therefore did not derive U.S. citizenship under either section 320 or 321 of the former Act.

The AAO also notes that the applicant fails to qualify for U.S. citizenship under section 322 of the former Act, 8 U.S.C. § 1433. 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.

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[A] person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years: *Provided*, That any periods of honorable service in the Armed Forces of the United States by such citizen parent may be included in computing the physical presence requirements of this paragraph.

(4) If the citizen parent is an adoptive parent of the child, the child was adopted by the citizen parent before the child reached the age of 16 years . . .

(b) Attainment of citizenship status; receipt of certificate

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.

(c) Adopted children

Subsection (a) of this section shall apply to the adopted child of a United States citizen adoptive parent if the conditions specified in such subsection have been fulfilled.

The AAO notes that, whether or not an applicant satisfies the requirements set forth in section 322(a) of the former Act, he is required to establish that his application for citizenship was approved, and that he took the oath of allegiance, prior to his 18<sup>th</sup> birthday. Section 322(a) of the former Act, 8 U.S.C. § 1433 (1970). 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 he did not apply for a certificate of citizenship before he turned 18, because no such application was approved, and because he did not take an oath of allegiance prior to his 18<sup>th</sup> birthday.

“There must be strict compliance with all the congressionally imposed prerequisites to the acquisition of citizenship.” *Fedorenko v United States*, 449 U.S. 490, 506 (1981). 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 AAO finds that the applicant has not met his burden of proof, and his appeal will be dismissed.

**ORDER:** The appeal is dismissed.