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

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PUBLIC COPY

U.S. Citizenship and Immigration Services

[redacted]

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Date: APR 2 4 2012 Office: KENDALL, FL [redacted]

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship under Former Section 321 of the Immigration and Nationality Act; 8 U.S.C. § 1432 (repealed).

ON BEHALF OF APPLICANT:

[redacted]

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.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Kendall, Florida. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be remanded for action consistent with this decision.

The record reflects that the applicant was born on November 14, 1979 in Honduras. The applicant's parents, as reflected on her birth certificate, are [redacted] The applicant's parents were never married to each other. The applicant's mother became a U.S. citizen upon her naturalization on April 25, 1994, when the applicant was 16 years old. The applicant was admitted to the United States as lawful permanent resident on June 23, 1991, when she was 13 years old. The applicant seeks a certificate of citizenship claiming that she derived U.S. citizenship upon her mother's naturalization.

The field office director denied the application upon finding that the applicant was legitimated and therefore could not derive U.S. citizenship solely through her mother under former section 321(a)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432(a)(3) (repealed).

On appeal, the applicant, through counsel, maintains that she derived U.S. citizenship through her mother alone because she was not legitimated. *See* Statement of the Applicant on Form I-290B, Notice of Appeal to the AAO. The AAO notes that counsel indicated that a brief or additional evidence would be submitted to the AAO within 30 days of filing the appeal but, to date, no such brief or additional evidence has been received. Thus, the record now before the AAO is deemed complete.

The applicable law for derivative citizenship purposes is "the law in effect at the time the critical events giving rise to eligibility occurred." *Minasyan v. Gonzales*, 401 F.3d 1069, 1075 (9th Cir. 2005). Former section 321 of the Act, as in effect prior to the Child Citizenship Act of 2000 (the CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), is applicable to this case because the applicant was over the age of 18 years on February 27, 2001, the CCA's effective date. *See Matter of Rodriguez-Tejedor,* 23 I&N Dec. 153 (BIA 2001).

Former section 321 of the Act, stated, 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 (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 18 years.

Here, the applicant satisfied several of the requirements for derivative citizenship set forth in former section 321(a) of the Act before her eighteenth birthday. Specifically, prior to the applicant's eighteenth birthday, she was admitted to the United States as a lawful permanent resident and her mother naturalized. However, the applicant's father is not a U.S. citizen. Thus, the applicant did not derive U.S. citizenship under former section 321(a)(1) of the Act, which requires the naturalization of both parents. The record also does not indicate that the applicant's father was deceased prior to the applicant's eighteenth birthday and she is consequently ineligible to derive U.S. citizenship from her mother alone under former section 321(a)(2) of the Act. The applicant is also ineligible to derive citizenship through her mother under the first clause of former section 321(a)(3) of the Act because her parents were never married, and therefore never "legally separated." Lastly, the applicant was legitimated under Honduran law and therefore her paternity was established and she could not derive U.S. citizenship solely through her mother under the second clause of former section 321(a)(3) of the Act.[1] Consequently, the applicant did not derive citizenship upon her mother's naturalization under former section 321(a) of the Act.

The AAO nevertheless notes that the record contains a copy of the applicant's U.S. passport. In *Matter of Villanueva,* 19 I&N Dec. 101 (BIA 1984), the Board of Immigration Appeals (Board) held that a valid U.S. passport is conclusive proof of U.S. citizenship. Specifically, the Board held in *Matter of Villanueva* that:

> unless void on its face, a valid United States passport issued to an individual as a citizen of the United States is not subject to collateral attack in administrative immigration proceedings but constitutes conclusive proof of such person's United States citizenship.

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[1] The Honduran Constitution, effective December 21, 1957, eliminated the distinction between legitimate, legitimated, and natural children and accorded children equal rights and duties. *See Matter of Sanchez,* 16 I&N Dec. 671 (BIA 1979). Further, the applicant was formally recognized by her father on November 11, 1981, as reflected in her birth certificate.

Where, as here, the applicant has failed to establish statutory eligibility for U.S. citizenship, a certificate of citizenship cannot be issued. The USCIS Adjudicator s Field Manual (AFM) at ^ 71.1(e) instructs that

> An unexpired United States passport issued for 5 or 10 years is now considered prima facie evidence of U.S. citizenship. Because it does not provide the actual basis upon which citizenship was acquired or derived, the submission of additional documentation may be required or the passport file may be requested. If after review there are differences or discrepancies between the USCIS information and the Passport Office records which would indicate that the application should not be approved, no action should be taken until the Passport Office has an opportunity to review and decide whether to revoke the passport.

The matter must therefore be remanded to the director to request that the Passport Office review and decide whether to revoke the applicant s passport in accordance with the instructions in chapter 83 of the AFM. The director shall then issue a new decision which, if adverse to the applicant, shall be certified to the AAO for review.

ORDER: The matter is remanded to the director for action consistent with this decision.