U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

Date: AUG 0 6 2013 Office: MILWAUKEE, WI FILE: [redacted]

IN RE: Respondent: [redacted]

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Certificate of Citizenship pursuant to Former Section 321(a) of the Immigration and Nationality Act, 8 U.S.C. § 1432(a)(repealed).

ON BEHALF OF RESPONDENT:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Application for Certificate of Citizenship (Form N-600) was denied by the Field Office Director (the director), Milwaukee, Wisconsin. The applicant filed a motion to reopen and reconsider the denial. The director denied the applicant's motion, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born in in Brazil. The applicant was adopted by and on November 22, 1994, when the applicant was 15 years old. The applicant's adopted mother was born in the United States, and the applicant's adopted father became a U.S. citizen upon his naturalization on March 23, 1989. The applicant's was admitted to the United States as a lawful permanent resident on May 3, 1996, when the applicant was 16 years old. The applicant seeks a certificate of citizenship under former section 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432, claiming that he derived U.S. citizenship automatically upon obtaining lawful permanent resident status.

The director determined that the applicant was statutorily ineligible for a certificate of citizenship under section 320 of the Act, 8 U.S.C. § 1431, as amended by the Child Citizenship Act of 2000 (the CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000). The application was denied accordingly.

The applicant, through counsel, filed a motion to reopen and reconsider the director's denial indicating that his citizenship claim arose under former section 321 of the Act which, although repealed, continued to apply to individuals who were over the age of 18 when the CCA went into effect in 2001.

The applicant's motion was denied. The director concluded that the applicant's motion failed to meet the requirements for a motion to reopen and, with respect to reconsideration, the director concluded that the applicant did not derive U.S. citizenship under former sections 320, 321 or 322 of the Act, 8 U.S.C. §§ 1431, 1432 and 1433, as in effect prior to the CCA's amendments.

On appeal, the applicant, through counsel, contends, in relevant part, that he "automatically became a citizen of the United States upon his admission to lawful permanent residence on 5/3/1996 while both his parents were U.S. citizens. . . ." *See* Appeal Brief at 2. Counsel further maintains that the applicant acquired U.S. citizenship under former section 321 of the Act, and that the acquisition was automatic and without the need for filing an application prior to the applicant's eighteenth birthday. *Id.* at 4-5. Counsel claims that the order in which the requirements in former section 321 of the Act are fulfilled does not matter, so long as all conditions are met while the applicant is still under the age of 18. Id. at 5 (citing, *inter alia*, *Matter of Baires-Larios*, 24 I&N Dec. 467, 468 (BIA 2008). Counsel also addresses the applicant's renunciation of his lawful permanent resident status in 2004, indicating that it bears no relevance to the question of his previously acquired U.S. citizenship. *Id.* at 7.

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The applicable law for derivative citizenship purposes is that in effect at the time the critical events giving rise to eligibility occurred. *Minasyan v. Gonzales*, 401 F.3d 1069, 1075 (9th Cir. 2005). Because the applicant was over the age of 18 when the CCA amendments went

into effect, former sections 320, 321 and 322 of the Act, as in effect prior to the enactment of the CCA, is the applicable law in this case. *See Matter of Rodriguez-Tejedor,* 23 I&N Dec. 153 (BIA 2001).

Former sections 320 and 321 of the Act provided for acquisition of U.S. citizenship upon the naturalization of a parent, not through a native-born U.S. citizen parent or already naturalized parent. Former section 322 of the Act provided for acquisition of U.S. citizenship upon an application filed prior to the child's eighteenth birthday. The applicant's adopted mother is a native-born U.S. citizen, his adoptive father naturalized prior to his adoption and residence in the United States. Additionally, the applicants adopted parents did not file an application for a certificate of citizenship pursuant to former section 322 prior to the applicant's eighteenth birthday. More importantly, the plain language of subsection (b) of former sections 320 and 321 of the Act require that an adopted child, like the applicant, establish that he was residing in the United States, in his father's custody, at the time of his naturalization.

Former section 321(a) of the Act, for instance, provided, in pertinent part:

> A child born outside of the United States of alien parents . . . becomes a citizen of the United States upon fulfillment of the following conditions:
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> (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 such child is unmarried and under the age of eighteen 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 eighteen years.
>
> (b) Subsection (a) of this section shall apply to an adopted child *only if the child is residing in the United States at the time of naturalization of such adoptive parent or parents*, in the custody of his adoptive parent or parents, pursuant to a lawful admission for permanent residence.

(Emphasis added).

Thus, former section 321 of the Act does not provide for derivation of U.S. citizenship other than upon the naturalization of a parent. More importantly, former section 321(b) of the Act, like former section 320(b) of the Act, specifically requires that, in the case of adopted children, U.S. citizenship is derived "only if the child is residing in the United States at the time of naturalization of [the parent]." *See Smart v. Ashcroft*, 401 F.3d 119, 123 (2nd Cir. 2005). The applicant's father naturalized in 1989. The applicant became a lawful permanent resident in 1996. The applicant was not residing in the United States, pursuant to a lawful permanent resident admission, in the custody of his adopted father "at the time of [his] naturalization."[1] Thus, the applicant did not derive U.S. citizenship under former sections 320, 321, or 322 of the Act, or any other provision of law.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.

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[1] Counsel reliance on *Matter of Baires-Larios*, *supra*, is misplaced. *Baires-Larios* addresses the fulfillment of the requirements in subsection (a) of former section 321 of the Act, not the specific requirement in subsection (b) that the child be residing with the adopted parent at the time of his naturalization.