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U.S. Citizenship  
and Immigration  
Services

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FILE: [Redacted] Office: PHILADELPHIA, PENNSYLVANIA Date: MAY 09 2005

IN RE:

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*

Robert P. Wiemann, Director  
Administrative Appeals Office

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

The record reflects that the applicant was born in the Dominican Republic on January 10, 1983. The applicant's mother, [REDACTED] was born in the Dominican Republic. The applicant's father, [REDACTED] was born in the Dominican Republic and became a naturalized United States (U.S.) citizen on August 10, 2001. The record reflects that the applicant's parents were married in the Dominican Republic, and that they obtained a divorce in the Dominican Republic in January 1986. The applicant's father married [REDACTED] a U.S. citizen, on March 5, 1987. Ms. [REDACTED] never arranged to legally adopt the applicant. The applicant was admitted into the United States on July 6, 1991 pursuant to a relative petition filed by his father. The applicant claims to have derived U.S. citizenship through his father and seeks a Certificate of Citizenship under section 321 of the former Immigration and Nationality Act (the Act), 8 U.S.C. § 1432.

The director concluded that the applicant's father obtained U.S. citizenship after the applicant's eighteenth birthday; therefore the applicant did not derive citizenship through his father. The application was denied accordingly. *Decision of Director*, Philadelphia District Office, dated March 1, 2005.

On appeal, the applicant contends that his N-600 Application for Certificate of Citizenship should have been adjudicated simultaneously with [REDACTED] N-400 Application for Naturalization. The applicant asserts that the U.S. Citizenship and Immigration Services (the Service) officer who reviewed [REDACTED] N-400 should have advised him that the application needed to be filed before the applicant turned eighteen years of age. The applicant further maintains that he is eligible for a Certificate of Citizenship under section 341(b)(2) of the Act and for national status under section 101(a)(22) of the Act.

Because the applicant turned eighteen years of age prior to February 27, 2001, section 321 of the former Act applies. Section 321 of the former Act states in pertinent part that:

- (a) A child born outside of the United States of alien parents . . . 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 such child is 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.

In the present case, the record reflects that when the applicant's parents divorced in 1986, the applicant's mother was awarded custody of the children, including the applicant. The applicant provided no evidence to establish that the divorce decree was subsequently modified regarding custody of the children or that the applicant resided in the legal custody of [REDACTED]. The AAO therefore finds that the applicant has failed to establish that he resided in the legal custody of his U.S. citizen father, as required by section 321(a)(3) of the former Act.

The applicant turned eighteen years of age on January 10, 2001. [REDACTED] became a naturalized U.S. citizen on August 10, 2001. Accordingly, the applicant failed to establish that [REDACTED] naturalization occurred before the applicant's eighteenth birthday as required by section 321(a)(4) of the former Act.

The applicant contends that the Service officer who adjudicated [REDACTED] N-400 was "duty bound" to advise him that the application needed to be filed before the applicant reached eighteen years of age. The applicant further maintains that his submission of the N-600 on January 5, 2005 is nunc pro tunc to the date of approval of [REDACTED] N-400. The AAO notes that the Service had no affirmative duty to advise [REDACTED] concerning the applicant's N-600. The burden to file an application and to establish eligibility for the benefit sought is on the applicant, not the Service. Additionally, even if the applicant's N-600 is nunc pro tunc to the date [REDACTED] became a naturalized U.S. citizen the applicant did not establish that the naturalization occurred before the applicant turned eighteen. Also, as stated above, the applicant did not establish that he resided in the legal custody of [REDACTED].

The applicant asserts that he is entitled to the issuance of a Certificate of Citizenship under section 341(b)(2) and to the granting of "national" status under section 101(a)(22)(B). Section 341 provides:

(b) A person who claims to be a national, but not a citizen, of the United States may apply to the Secretary of State for a certificate of non-citizen national status. Upon-

- (2) in the case of such a person born outside of the United States or its outlying possessions, taking and subscribing, before an immigration officer within the United States or its outlying possessions, to the oath of allegiance required by this Act of a petitioner for naturalization, the individual shall be furnished by the Secretary of State with a certificate of non-citizen national status, but only if the individual is at the time within the United States or its outlying possessions.

Section 101 provides:

(a) As used in this Act-

22) The term "national of the United States" means:

- (B) a person who, though not a citizen of the United States, owes permanent allegiance to the United States.

These provisions of the Act are not relevant to the adjudication of the applicant's N-600. If the applicant seeks a certificate of non-citizen national status under section 341(b)(2) of the Act, he should apply with the U.S. Department of State.

8 C.F.R. 341.2(c) states that the burden of proof shall be on the claimant to establish citizenship by a preponderance of the evidence. *See also* § 341 of the Act, as amended, 8 U.S.C. § 1452. The applicant failed to establish that he meets the requirements for citizenship as set forth in section 321 of the former Act and his appeal will be dismissed.

**ORDER:** The appeal is dismissed.