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

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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] OFFICE: EL PASO Date: DEC 2 6 2006

IN RE: [redacted]

APPLICATION: Application for Certificate of Citizenship under Section 320 and 321 of the former Immigration and Nationality Act; 8 U.S.C. §§ 1431 and 1432.

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, El Paso, 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 June 19, 1964 in Mexico. Counsel for the applicant provides that the applicant's natural parents were not U.S. citizens. The applicant's mother, [redacted] married a U.S. citizen, [redacted] on June 2, 1971, and she became a naturalized U.S. citizen on December 3, 1998. The applicant and his mother immigrated to the United States with [redacted] on November 15, 1972, when the applicant was eight years old. On May 20, 1977, [redacted] adopted the applicant as his son. As the applicant did not acquire citizenship at birth through his natural parents, he filed a Form N-600, Application for Citizenship, to recognize his citizenship based on the fact that his adoptive father is a U.S. citizen.

The district director concluded that the applicant was statutorily ineligible for a certificate of citizenship, as he did not meet the requirements of former sections 320 and 321 of the Act. *Decision of the District Director*, dated November 26, 2004.

The record contains a brief from counsel; a copy of the applicant's Form I-551 permanent resident card; a copy of the adoption decree for the applicant; a copy of the applicant's father's birth certificate; a copy of the applicant's father's military service record; a copy of the applicant's father's death certificate; a copy of the applicant's mother's naturalization certificate, and; a copy of the applicant's parents' marriage certificate. The entire record was reviewed and considered in rendering this decision.

Sections 320 and 322 of the former Act were amended by the Child Citizenship Act of 2000 (CCA), which took effect on February 27, 2001, and section 321 of the former Act, 8 U.S.C. § 1432, was repealed. Section 320 of the Act, as amended, permits a child born outside of the U.S. to automatically become a citizen of the United States upon fulfillment of the following conditions:

> (1) At least one parent of the child is a citizen of the United States, whether by birth or naturalization.
>
> (2) The child is under the age of eighteen years.
>
> (3) The child is residing in the United States in the legal and physical custody of the citizen parent pursuant to a lawful admission for permanent residence.

The AAO notes that legal precedent decisions have clearly stated that the provisions of the CCA are not retroactive and that the amended provisions of the Act apply only to persons who were not yet eighteen years old as of February 27, 2001. 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 section 320 of the amended Act. *See Matter of Rodriguez-Tejedor,* 23 I&N Dec. 153 (BIA 2001).

The AAO notes further that the applicant does not qualify for citizenship pursuant to section 320 of the former Act, 8 U.S.C. § 1431. Former section 320 of the Act provided that:

> (a) A child born outside of the United States, one of whose parents at the time of the child's birth was an alien and the other of whose parents then was and never thereafter ceased to be a citizen

of the United States, shall, if such parent is naturalized, become a citizen of the United States, when

(1) such naturalization takes place while such child is under the age of 18 years; and

(2) such child is residing in the United States pursuant to a lawful admission for permanent residence at the time of naturalization or thereafter and begins to reside permanently in the United States while under the age of 18 years.

Former section 320 of the Act requires an applicant's alien parent to have become a U.S. citizen prior to the applicant's 18th birthday. Former section 320(a)(1) of the Act. The applicant's mother became a naturalized U.S. citizen on December 3, 1998, when the applicant was 34 years old. Accordingly, the applicant did not meet the age requirement of former section 320(a)(1) of the Act.

Section 321 of the former Act provided, in pertinent part:

(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.

Former section 321 of the Act requires an applicant's parents to have become U.S. citizens prior to the applicant's 18th birthday. Former section 321(a)(4) of the Act. As noted above, the applicant's mother became a naturalized U.S. citizen on December 3, 1998, when the applicant was 34 years old. Accordingly, the applicant did not meet the age requirement of former section 321(a)(4) of the Act.

Counsel asserts that the district director applied an erroneous provision of the Act, and that the present matter falls under the authority of section 301(g) of the Act. Yet, section 301(g) of the Act applies to individuals who are born abroad while having a U.S. citizen parent. Neither of the applicant's natural parents were U.S. citizens on the date of his birth. Though the applicant was adopted by [redacted] who was a U.S.

citizen by birth, the applicant was not "born . . . of . . . a citizen of the United States," as required by section 301(g) of the Act.

Based on the foregoing, the applicant has not shown that he derived citizenship from his parents by operation of law, such that he is eligible for a certificate of citizenship pursuant to the present application.[1]

The regulation at 8 C.F.R. § 341.2(c) states that the burden of proof shall be on the applicant to establish his or her claimed citizenship by a preponderance of the evidence. The applicant has not met his burden in the present matter. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.

[1] As stated by the district director, the denial of the applicant's Form N-600 application is without prejudice, and he may apply for naturalization under section 334 of the Act.