U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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[redacted]

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FILE: [redacted] OFFICE: CALIFORNIA SERVICE CENTER DATE: APR 19 2007

IN RE: APPLICANT: [redacted]

APPLICATION: Application for Certificate of Citizenship.

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.

Ellen L. Johnson

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the application denied.

The applicant was born in the Dominican Republic on August 27, 1978. The applicant's mother was born in the Dominican Republic, and she became a naturalized U.S. citizen on June 8, 1988, when the applicant was nine years old. The applicant's father was born in the Dominican Republic, and he became a lawful permanent resident on February 2, 1967. He is not a U.S. citizen. The record reflects that the applicant's parents were married in the Dominican Republic on November 8, 1967. The applicant presently seeks a Certificate of Citizenship pursuant to sections 321 and 322 of the former Immigration and Nationality Act (the former Act); 8 U.S.C. §§ 1432 and 1433, based on the claim that he automatically derived U.S. citizenship through his mother when she became a naturalized U.S. citizen in 1988.

The district director determined that the applicant was ineligible for a Certificate of Citizenship under section 321 of the former Act, because he failed to establish that both of his parents became naturalized U.S. citizens prior to his eighteenth birthday. The district director determined that the applicant was also ineligible for citizenship under section 320 of the Immigration and Nationality Act, as amended (the amended Act); 8 U.S.C. § 1431, because he was over the age of eighteen when section 320 of the Act provisions came into effect on February 27, 2001. The application was denied accordingly.

The applicant asserts on appeal that at the time of his mother's naturalization in 1988, he met requirements for automatic derivative citizenship under section 321 and section 322 of the former Act. On this basis, the applicant asks that his application for citizenship be approved.

It is noted that sections 320 and 322 of the former Act were amended by the Child Citizenship Act of 2000 (CCA) as of February 27, 2001. The provisions of the CCA are not retroactive and the provisions of sections 320 and 322 of the amended Act apply only to persons who were not yet eighteen years old as of February 27, 2001. *See Matter of Rodriguez-Tejedor,* 23 I&N Dec. 153 (BIA 2001). Because the applicant was over the age of eighteen on February 27, 2001, he is not eligible for consideration under sections 320 or 322 of the Act.[1]

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[1] Section 320 of the amended Act states in pertinent part that:

> (a) A child born outside of the United States automatically becomes a citizen of the United States when all of the following conditions have been fulfilled:
>
> (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.

Section 322 of the amended Act provides, in pertinent part that:

> (a) A parent who is a citizen of the United States . . . may apply for naturalization on behalf of a child born outside of the United States who has not acquired citizenship automatically under section 320. The Attorney General [now Secretary, Homeland Security, "Secretary"] shall issue a

Section 321 of the former Act, 8 U.S.C. § 1432, was repealed on February 27, 2001, however, all persons who became U.S. citizens automatically under section 321 of the former Act, as previously in force prior to February 27, 2001, may apply for a certificate of citizenship at any time. *See Matter of Rodriguez-Tejedor, supra.* Section 321 of the former Act, provided 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
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> (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
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> (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

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> certificate of citizenship to such applicant 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 United States citizen parent--
> (A) has . . . been physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years; or
> (B) has . . . a citizen parent who has been physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years.
> (3) The child is under the age of eighteen years.
> (4) The child is residing outside of the United States in the legal and physical custody of the applicant
> (5) The child is temporarily present in the United States pursuant to a lawful admission, and is maintaining such lawful status.
>
> (b) Upon approval of the application (which may be filed from abroad) and . . . upon taking and subscribing before an officer of the Service within the United States to the oath of allegiance required by this Act 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.

> 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.

The applicant does not claim that his father died or that his father became a naturalized U.S. citizen prior to the applicant's eighteenth birthday, nor does the record contain any evidence to indicate that either event occurred. The AAO therefore finds that the requirements set forth in section 321(a)(1) and 321(a)(2) of the former Act have not been met. The AAO additionally finds that the applicant failed to establish that prior to his eighteenth birthday, he met the "legal separation" requirements set forth in section 321(a)(3) of the former Act. For immigration purposes, "legal separation" means either a limited or absolute divorce obtained through judicial proceedings. *See Matter of H,* 3 I&N Dec. 742 (1949). In the present matter, the record contains a petition for divorce initiated by the applicant's mother in the Dominican Republic, on March 5, 1988. The record does not contain an absolute or limited divorce decree, however. Rather, the record contains a May 27, 2004, sworn declaration from a public notary attorney in the Dominican Republic indicating that the applicant's mother did not complete the divorce proceeding against the applicant's father. The record additionally contains a May 21, 2004, affidavit signed by the applicant's mother reflecting, in pertinent part, that she and the applicant's father were never legally divorced. Accordingly, the applicant has failed to establish that his parents obtained a "legal separation," as required by section 321(a)(3) of the former Act. The applicant therefore does not qualify for citizenship under section 321 of the former Act.

Section 322 of the former Act provided, in pertinent part:

> (a) Application of citizen parents; requirements
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> 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:
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> 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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> . . . .
>
> b) Attainment of citizenship status; receipt of certificate
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> Upon approval of the application . . . [and] upon taking and subscribing before an officer of the Service [CIS] 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.

The applicant failed to establish that his mother filed a citizenship application for the applicant prior to his eighteenth birthday. The applicant also failed to establish that such an application was approved prior to his eighteenth birthday, or that he took an oath of allegiance prior to his eighteenth birthday. Accordingly, the applicant did not derive U.S. citizenship under section 322 of the former Act.

The AAO notes that the record contains a copy of a 10-year, U.S. passport issued to the applicant on August 12, 2004, by the U.S. Department of State. The Board held in *Matter of Villanueva*, 19 I&N, Dec. 101 (BIA 1984), 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, and constitutes proof of such person's United States citizenship. In the present matter, a letter from the U.S. Department of State reflects that the applicant's U.S. passport was revoked by the Department of State on March 17, 2005, as erroneously issued. The passport therefore does not constitute evidence of the applicant's U.S. citizenship for purposes of the present decision.

The regulation at 8 C.F.R. § 341.2(c) provides that the burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. The applicant failed to meet his burden in the present matter. The appeal will therefore be dismissed and the application denied.

ORDER: The appeal is dismissed. The application is denied.