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

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: CHICAGO, IL Date: DEC 20 2007

IN RE: Applican[redacted]

APPLICATION: Application for Certificate of Citizenship under Section 301(a)(7) of the former Immigration and Nationality Act; 8 U.S.C. § 1401(a)(7).

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, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Chicago, Illinois 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 January 24, 1973 in Poland. The applicant's parents, [redacted] are U.S. citizens. They were married on June 14, 1969 in Poland. The applicant's father derived U.S. citizenship through his mother (a native-born U.S. citizen) on October 23, 1984. The applicant's mother became a naturalized U.S. citizen on June 16, 1994. The applicant presently seeks a certificate of citizenship claiming that he acquired U.S. citizenship from his parents or from his grandmother.

The district director concluded that the applicant did not derive U.S. citizenship pursuant to section 321 of the former Immigration and Nationality Act (the Act), 8 U.S.C. § 1432 (repealed). The district director based his conclusion on the fact that the applicant's mother naturalized after the applicant's 18th birthday. The application was accordingly denied. On appeal, the applicant's father claims *inter alia* that he is a U.S. citizen and that his son, the applicant, is therefore also a U.S. citizen. *See* Statement of the Applicant on Form I-290B, Notice of Appeal.

The AAO notes that "[t]he applicable law for transmitting citizenship to a child born abroad when one parent is a U.S. citizen is the statute that was in effect at the time of the child's birth." *Chau v. Immigration and Naturalization Service,* 247 F.3d 1026, 1029 (9th Cir. 2000) (citations omitted). The applicant was born on January 24, 1973. Sections 301(a)(7) and 321(a) of the former Act, 8 U.S.C. §§ 1432 and 1401(a)(7), are therefore applicable to his citizenship claim.

Section 301(a)(7) of the former Act states that the following shall be nationals and citizens of the United States at birth:

> [A] person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years: *Provided*, That any periods of honorable service in the Armed Forces of the United States by such citizen parent may be included in computing the physical presence requirements of this paragraph.

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
> (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.

The AAO notes that legal precedent decisions have clearly established that the provisions of the Child Citizenship Act of 2000, which amended sections 320 and 322 of the Act, and repealed section 321 of the former Act, are not retroactive. 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 18 on February 27, 2001, the AAO finds that he is not eligible for the benefits of section 320 or 322 of the amended Act, 8 U.S.C. §§ 1431 or 1433. *See Matter of Rodriguez-Tejedor,* 23 I&N Dec. 153 (BIA 2001).

Section 301(a)(7) of the former Act, 8 U.S.C. § 1401(a)(7), requires that the applicant establish either of his parents was a United States citizen at the time of his birth. The record confirms that the applicant's father derived U.S. citizenship in 1984 and that the applicant's mother naturalized in 1994. Thus, because neither of the applicant's was a U.S. citizen in 1973 when the applicant was born, he did not acquire U.S. citizenship at birth.[1]

Section 321 of the former Act, 8 U.S.C. § 1432 (repealed), requires that that applicant establish, *inter alia*, that both his parents naturalized prior to his 18th birthday. The AAO notes that the applicant's father derived U.S. citizenship in 1984, and that his mother naturalized in 1994, after the applicant's 18th birthday. The applicant is therefore ineligible to derive citizenship under section 321 of the former Act.

The AAO notes "[t]here must be strict compliance with all the congressionally imposed prerequisites to the acquisition of citizenship." *Fedorenko v United States*, 449 U.S. 490, 506 (1981). 8 C.F.R. § 341.2(c) provides that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. In order to meet this burden, the applicant must submit relevant, probative and credible evidence to establish that the claim is "probably true", or "more likely than not." *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). The AAO finds that the applicant has not met his burden of proof and the appeal will be dismissed.

ORDER: The appeal is dismissed.

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[1] The AAO further notes that there is no evidence in the record suggesting that either of the applicant's parents were physically present in the United States prior to the applicant's birth in 1973. The AAO also notes that the applicable law in this case does not provide for the applicant's acquisition or derivation of U.S. citizenship through his grandmother.