U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: MAR 05 2007
WAC 06 058 53196

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship pursuant to Section 321 of the Nationality Act, 8 U.S.C. § 1432, now repealed

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 Director, California Service Center, 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 August 9, 1981 in Canada. The applicant's father, [redacted], born in Haiti, became a naturalized U.S. citizen on January 26, 2000, when the applicant was 18 years old. Although the record does not indicate when the applicant's parents married, it does include documentation of the child custody agreement entered into by his mother and father on May 21, 1991 following their divorce. The applicant was admitted into the United States as a lawful permanent resident on August 26, 1991 when he was ten years old. The applicant seeks a certificate of citizenship pursuant to former section 321(a)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432(a)(3), based on the naturalization of his father following the legal separation of his parents.

The director denied the application based on his determination that the applicant was already 18 years of age at the time of his father's 2000 naturalization and, therefore, ineligible to benefit from the provisions of former section 321 of the Act.

On appeal, the applicant submits a statement from his father in which his father asserts that he initially filed for naturalization in January 1997 and that it was the loss of this first application by the former Immigration and Naturalization Service (INS), now Citizenship and Immigration Services, that delayed his naturalization until 2000. In support of these assertions, the applicant submits the July 12, 1999 INS notice mailed to his father asking him to submit a second Form N-400, Application for Citizenship because the original application could not be located. The applicant's father asks that his son not be penalized for this INS mistake.

The section of law under which the applicant contends he has established U.S. citizenship was repealed by the Child Citizenship Act of 2000 (CCA), effective as of February 27, 2001. However, any person who would have acquired automatic citizenship under its provisions prior to February 27, 2001 may apply for a certificate of citizenship at any time. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). Therefore, the issue before the AAO is whether the applicant has established that he acquired U.S. citizenship under the provisions of section 321(a)(3) of the Act prior to February 27, 2001.

Former section 321 of the Act, 8 U.S.C. § 1432, provided 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 record indicates that the applicant's father became a U.S. citizen on January 26, 2000, when the applicant was already 18 years of age. As citizenship may be acquired through the naturalization of a parent only when an individual has not reached the age of 18 years, the applicant is not eligible for a certificate of citizenship. While the AAO notes the statement written by the applicant's father and regrets any delay in his naturalization caused by the loss of his original Form N-400, the requirements of former section 321 of the Act may not be amended to benefit the applicant. As he was 18 years of age on the date of his father's naturalization, he is not eligible for a certificate of citizenship under the provisions of section 321 of the Act.

For the reasons previously discussed, the applicant has not established that he is eligible for a certificate of citizenship. Accordingly, the appeal will be dismissed

The regulation at 8 C.F.R. § 341.2(c) states that the burden of proof shall be on the applicant to establish the claimed citizenship by a preponderance of the evidence. The applicant has not met his burden in this proceeding.

ORDER: The appeal is dismissed.