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

PUBLIC COPY

[redacted]

FILE: [redacted] Office: NEW YORK Date: DEC 19 2008

IN RE: Applicant: [redacted]

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:

[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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, New York, New York, 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 February 27, 1979 in Guatemala. His birth certificate indicates that his parents are [redacted] and [redacted] The applicant's mother indicates that she was never married to [redacted]. The applicant was admitted to the United States as a lawful permanent resident on September 18, 1985, when he was 6 years old. The applicant's mother became a U.S. citizen upon her naturalization on July 4, 1996, when the applicant was 17 years old. The applicant's father is not a U.S. citizen. The applicant seeks a certificate of citizenship pursuant to section 321 of the former Immigration and Naturalization Act (the former Act), 8 U.S.C. § 1432 (repealed), claiming that he derived citizenship through his mother.

The district director denied the applicant's citizenship claim. The director first noted that the applicant was ineligible for benefits under the Child Citizenship Act of 2000 (CCA) because he was over 18 years old on its effective date. The director found that the applicant did not derive U.S. citizenship upon his mother's naturalization, pursuant to section 321 of the former Act, 8 U.S.C. § 1432 (repealed), because his paternity was established by legitimation. The application was accordingly denied.

On appeal, the applicant, through counsel, contends that the district director erred in denying the citizenship claim because he was not legitimated. *See* Appeal Brief. The applicant maintains that his parents were never married, and that his father "abandoned him at a very young age and never supported him financially or emotionally." *Id.*

"The 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 in this case was born in 1979. The applicant was over 18 on February 27, 2001, the effective date of the CCA. The CCA is not retroactive. *See Matter of Rodriguez-Tejedor,* 23 I&N Dec. 153 (BIA 2001). Section 321 of the former Act, 8 U.S.C. § 1432, is therefore applicable to this case.

Section 321 of the former Act, 8 U.S.C. § 1432, 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:
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> (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
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> (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 finds that the applicant has established that his mother naturalized and that he was admitted to the United States as a lawful permanent resident prior to his 18th birthday. The AAO finds, however, that the applicant has failed to establish that his paternity was not established by legitimation such that he could derive U.S. citizenship from his mother alone.

The AAO notes that the record also does not clearly establish that the applicant was born out of wedlock. In this regard, the AAO notes the applicant's mother's statement that she never married Mr. [redacted] Nevertheless, the record indicates that the applicant's mother was married and divorced. *See* Form N-600, Application for Certificate of Citizenship and Applicant's Mother's Certificate of Naturalization. The record does not indicate to whom the applicant's mother was married.

The AAO finds in any event that the applicant's paternity was established by legitimation under the law in Guatemala. In *Matter of Hernandez*, 17 I&N Dec. 7, 8 (BIA 1979), the Board of Immigration Appeals held that under article 86 of the Constitution of Guatemala, originally enacted in 1945, all children are equal before the law and have identical rights, thus abolishing all legal differences between children regardless of whether or not they have been born out of wedlock. The Board then noted that when a country eliminates all legal distinctions between legitimate and illegitimate children, all natural children are deemed to be the legitimate offspring of their natural father from the time that country's laws are changed.[1] *See Matter of Hernandez, supra.*

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 applicant has failed to meet his burden to prove that paternity was not established by legitimation. He is therefore not eligible for U.S. citizenship under section 321 of the former Act, 8 U.S.C. § 1431, and the appeal will be dismissed.

ORDER: The appeal is dismissed.

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[1] The Board also noted that Article 211 of the Constitution provides that a child may be acknowledged in the birth records upon a personal appearance by the parent before the officials of the Civil Registry.