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

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Citizenship and Immigration Services

PUBLIC COPY

E2

[redacted]

FILE: [redacted] Office: MIAMI, FL Date: JUL 03 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for Certificate of Citizenship under Section 321 of the former Immigration and Nationality Act; 8 U.S.C. § 1432 (repealed).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 District Director, Miami, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born January 12, 1960 in Cuba. The applicant's parents are [redacted] and [redacted]. The applicant's mother became a naturalized U.S. citizen on June 16, 1996, when the applicant was 36 years old. The applicant was admitted as a lawful permanent resident of the United States on March 19, 1975, at the age of 15. The applicant reached the age of 18 on January 12, 1978. He presently seeks a certificate of citizenship claiming that he derived U.S. citizenship through his mother.

The district director found the applicant ineligible for citizenship under sections 301 and 321 of the former Immigration and Nationality Act (the Act), 8 U.S.C. § 1401 and 1432 (repealed), noting that the Form N-600, Application for Certificate of Citizenship, and immigration records did not show that either of the applicant's parents was a U.S. citizen. The application was denied accordingly.

On appeal, the applicant submits his mother's Certificate of Naturalization, and contends that he derived U.S. citizenship upon her naturalization.

The Child Citizenship Act of 2000 amended sections 320 and 322 of the Act, and repealed section 321 of the former Act. The CCA became effective on February 27, 2001, and is not retroactive. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). The amended provisions of the Act apply only to persons who were not yet 18 years old as of February 27, 2001. Because the applicant was over the age of 18 on February 27, 2001, he is not eligible for the benefits of section 320 or 322 of the amended Act.

"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 1960. Therefore, sections 321 and 322 of the former Act apply to this case.[1]

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

[1] The applicant did not acquire citizenship at birth pursuant to section 301 of the Act, 8 U.S.C. § 1401, because neither of his parents was a U.S. citizen at the time of his birth.

> (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 did not derive citizenship pursuant to section 321 of the former Act, 8 U.S.C. § 1432 (repealed), because his mother naturalized when the applicant was 36 years old.

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

> (a) Application of citizen parents; requirements
>
> A parent who is a citizen of the United States may apply to the Attorney General [now the Secretary of 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:
>
> (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.
>
> (b) Attainment of citizenship status; receipt of certificate
>
> Upon approval of the application . . . [and] upon taking and subscribing before an officer of the Service 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 record in this case reflects that the applicant reached the age of 18 on January 12, 1978. Section 322(a)(3) of the former Act, 8 U.S.C. § 1433(a)(3) and the regulations promulgated thereunder, require that a certificate of citizenship application be filed, adjudicated, and approved with the oath of allegiance

administered before the applicant's 18th birthday. The applicant is over the age of 18. The AAO therefore finds that the applicant is ineligible for citizenship under section 322 of the former Act, 8 U.S.C. § 1433.

It is well established that the requirements for citizenship, as set forth in the Act, are statutorily mandated by Congress, and CIS lacks statutory authority to issue a Certificate of Citizenship when an applicant fails to meet the relevant statutory provisions set forth in the Act. A person may only obtain citizenship in strict compliance with the statutory requirements imposed by Congress. *INS v. Pangilinan*, 486 U.S. 875, 885 (1988). Even courts may not use their equitable powers to grant citizenship, and any doubts concerning citizenship are to be resolved in favor of the United States. *Id.* at 883-84; *see also United States v. Manzi*, 276 U.S. 463, 467 (1928) (stating that "citizenship is a high privilege, and when doubts exist concerning a grant of it ... they should be resolved in favor of the United States and against the claimant"). Moreover, "it has been universally accepted that the burden is on the alien applicant to show his eligibility for citizenship in every respect." *Berenyi v. District Director, INS*, 385 U.S. 630, 637 (1967).

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 in this case has not met his burden and the appeal will therefore be dismissed.

ORDER: The appeal is dismissed.