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U.S. Citizenship
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Services

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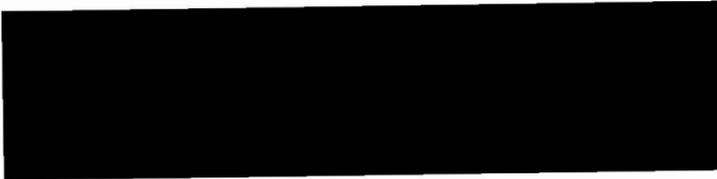


FILE: [REDACTED] Office: NEW YORK, NY Date: JUL 08 2008

IN RE: Applicant:

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Immigration and Nationality Act; 8 U.S.C. § 1432 (repealed).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:



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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, 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 sustained.

The record reflects that the applicant was born December 15, 1971 in Yemen. The applicant's parents are [REDACTED] and [REDACTED]. The applicant's mother passed away in 1978. The applicant's father became a naturalized U.S. citizen on June 6, 1986, when the applicant was 14 years old. The applicant was admitted as a lawful permanent resident of the United States on March 7, 1989, at the age of 17. The applicant reached the age of 18 on December 15, 1989. He presently seeks a certificate of citizenship claiming that he derived U.S. citizenship through his father.

The district director found the applicant ineligible for citizenship under section 322 of the former Act because he was over 18 years of age, or under section 321 of the former Act because of his failure to establish that [REDACTED] was his natural father or that he was his sole, surviving parent. The application was denied accordingly.

On appeal, the applicant contends that, contrary to the director's findings, the documents he submitted were not invalid or fraudulent. *See Applicant's Supplemental Brief.* The applicant also maintains that the application first filed by his father on his behalf was erroneously denied before his 18th birthday. In support of his appeal, the applicant submits a declaration from the Ministry of Interior/Ibb Office in the Republic of Yemen. The declaration states that birth, marriage and death certificates were only issued in Yemen upon request prior to February 2004, that the documentation was routinely issued years after the occurrence, and regardless of the province where it took place.

The CCA amended sections 320 and 322 of the Act, and repealed section 321 of the former Act. The CCA is not retroactive. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). The provisions of the Act amended by the CCA 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 1971. Therefore, sections 321 and 322 of the former Act apply to this case.

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 applicant was under 18 when his father naturalized, and when he was admitted to the United States as a lawful permanent resident. The applicant immigrated to the United States on the basis of an approved petition for alien relative filed by his father on his behalf. His mother had passed away in 1978. The AAO notes that the record includes the applicant's birth certificate, results of a DNA test indicating that the applicant is biologically related to his father,¹ his mother's death certificate, and his parents' marriage certificate. The record also includes a letter from Ministry of Interior/Ibb Office in the Republic of Yemen corroborating his claim that birth, death and marriage certificates in Yemen can be issued at any time by any district court within the country. The AAO notes that the applicant's claim is further corroborated by the U.S. Department of State's website at http://travel.state.gov/visa/frvi/reciprocity/reciprocity_3710.html. Thus, the AAO must conclude that the applicant's documentary evidence is legitimate and that he derived U.S. citizenship upon his admission to the United States as a lawful permanent resident.

Having found the applicant eligible for citizenship under section 321 of the former Act, the AAO need not analyze his eligibility under section 322 of the former Act.²

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 met his burden and the appeal will therefore be sustained.

ORDER: The appeal is sustained.

¹ The AAO recognizes that the applicant's picture is not included in the results of the DNA test. Nevertheless, the AAO notes that the test was accepted by the U.S. consulate in the processing of the applicant's immigrant visa when the applicant's biological relationship with his father was first questioned and determined.

² The AAO notes that the applicant is ineligible for citizenship under section 322 of the former Act because he is over 18 years of age. 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.