

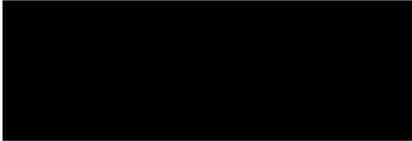
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: SACRAMENTO, CA Date: OCT 08 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for Certificate of Citizenship under Section 321 of the former Immigration and Nationality Act; 8 U.S.C. § 1421 (repealed).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 Field Office Director, Sacramento, California, 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 October 30, 1974 in Mexico. In 1985, she entered the United States without inspection and was subsequently adopted by [REDACTED] and [REDACTED]. [REDACTED] became a U.S. citizen upon his naturalization on April 22, 1985. The applicant seeks a certificate of citizenship under section 321 of the former Immigration and Nationality Act (the Act), 8 U.S.C. § 1432 (repealed).

The field office director denied the application finding that the applicant had failed to demonstrate that she was admitted to the United States as a lawful permanent resident. The application was accordingly denied.

On appeal, the applicant states that the field office director's decision is "founded on legal error." See Statement of the Applicant on Form I-290B, Notice of Appeal. She indicates that she was adopted in the United States prior to her 18th birthday, that her birth was registered in California, and that her father is a U.S. citizen. *Id.* The applicant, through counsel, indicates that she will be submitting a legal brief within 30 days. On September 17, 2008, the AAO notified counsel that no brief or additional evidence had been received. The AAO requested that a copy of the brief or additional evidence, along with evidence of its timely filing, be submitted within 5 business days. Counsel replied that no brief or additional evidence had been submitted.

"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 the present matter was born in 1974. The applicant was over 18 on the effective date of the Child Citizenship Act of 2000 (CCA).¹ Section 321 of the former Act, 8 U.S.C. § 1432 (repealed), 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:

- (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-

¹ The CCA repealed section 321, and amended sections 320 and 322 of the Act. 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. See *Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001).

(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 not admitted to the United States as a lawful permanent resident prior to her 18th birthday. Therefore, the applicant is not eligible for citizenship under section 321 of the former Act, 8 U.S.C. § 1421.

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. The applicant in the present case has not met her burden. The AAO finds that the applicant did not derive U.S. citizenship upon her adoptive father's naturalization. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.