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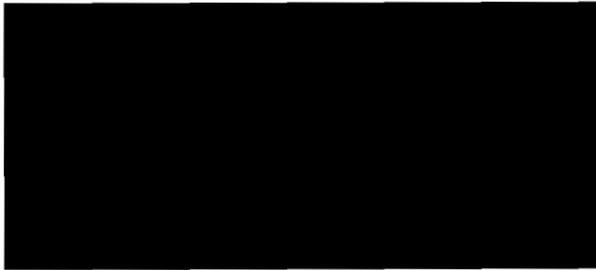
U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:



Office: HONOLULU, HI

Date:

OCT 27 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.

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Interim District Director, Honolulu, Hawaii, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant was born on July 31, 1977 in the Philippines. The applicant's parents, as indicated in his birth certificate, are [REDACTED] and [REDACTED]. The applicant's parents were married in 1983, and divorced on February 14, 1992, when the applicant was 14 years old. The applicant's mother became a U.S. citizen upon her naturalization on May 19, 1990, when the applicant was 12 years old. The applicant was admitted as a lawful permanent resident of the United States on July 24, 1993, when he was 15 years old. The applicant's 18th birthday was on July 31, 1995. The applicant presently seeks a certificate of citizenship under section 321 of the former Immigration and Nationality Act (the former Act), 8 U.S.C. § 1432.

The interim district director determined that the applicant did not qualify for citizenship under section 321 of the former Act because his parents did not obtain a "legal separation" prior to the applicant's mother's naturalization.

On appeal, the applicant, through counsel, asserts that the applicant's parents were separated in 1989, as indicated in their divorce decree, and that their separation date amounts to a "legal separation." Counsel cites *Minasyan v. Gonzales*, 401 F.3d 1069 (9th Cir. 2005), in support of the applicant's claim.

Section 321 of the former Act provides, 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 does not claim that his father was deceased or that his father naturalized prior to the applicant's 18th birthday, nor does the record contain any evidence to indicate that either event occurred. The AAO therefore finds that the requirements set forth in section 321(a)(1) and 321(a)(2) of the former Act have not been met. The AAO nevertheless finds that the applicant has established that his parents were legally separated prior to his 18th birthday, as required by section 321(a)(3) and (4) of the former Act. The AAO further notes that custody of the applicant was awarded to his mother upon the applicant's parents' divorce. Thus, the applicant has established that, prior to his 18th birthday, his custodial parent had become a United States citizen, that he was a lawful permanent resident of the United States, and that his parents had legally separated.

The Board of Immigration Appeals (Board) stated clearly in *Matter of H*, 3 I&N Dec. 742 (1949), that "legal separation" means either a limited or absolute divorce obtained through judicial proceedings. The applicant's parents were divorced on February 14, 1992, when the applicant was 14 years old. The AAO finds counsel's reliance on *Minasyan v. Gonzales, supra*, to be unnecessary. Instead, the AAO relies on *Matter of Baires-Larios*, 24 I&N Dec. 467 (BIA 2008), wherein the Board held that the statutory conditions of former section 321(a) of the Act are fulfilled if it is established that they occurred prior to the claimant's 18th birthday. *See also* USCIS Adjudicator's Field Manual at § 71.1(d)(2) (explaining that "as long as the applicant meets the requirements of the statute before age 18[,] the applicant derives U.S. citizenship").

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 AAO finds that the applicant has met his burden of proof and the appeal will be sustained.

ORDER: The appeal is sustained.