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**U.S. Department of Homeland Security**
U.S. Citizenship and Immigration Services
*Office of Administrative Appeals* MS 2090
Washington, DC 20529

**U.S. Citizenship and Immigration Services**

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FILE: [redacted] Office: ATLANTA Date: APR 23 2009

IN RE: [redacted]

APPLICATION: Application for Certificate of Citizenship under Section 320 of the Immigration and Nationality Act; 8 U.S.C. § 1431.

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, as required by 8 C.F.R. 103.5(a)(1)(i).

Ellen C. Johnson

John F. Grissom
Acting Chief, Administrative Appeals Office

**DISCUSSION**: The application was denied by the Field Office Director, Atlanta, Georgia, 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 November 28, 1962 in Ethiopia. The applicant's parents, as indicated in his birth certificate, are [redacted] and [redacted] The record contains an "Adoption Contract" executed in 1975. The applicant claims that he was adopted by [redacted]., a native-born U.S. citizen. The applicant was admitted to the United States as a non-preference immigrant on October 18, 1976. He claims that he acquired U.S. citizenship through his adoptive father.

The field office director evaluated the applicant's eligibility for citizenship under section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431. She found that the applicant's adoption "was not legally recognized for immigration purposes" and that the applicant was not admitted to the United States as an adopted child. She therefore concluded that the applicant did not qualify as an adopted child, and did not acquire U.S. citizenship.

The AAO notes that "[t]he 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 was born on 1962.

Sections 320 and 322 of the former Act were amended by the Child Citizenship Act of 2000 (CCA), which took effect on February 27, 2001, and section 321 of the former Act, 8 U.S.C. § 1432, was repealed. Section 320 of the Act, as amended, states in pertinent part:

> (a) A child born outside of the United States automatically becomes a citizen of the United States when all of the following conditions have been fulfilled:
>
> > (1) At least one parent of the child is a citizen of the United States, whether by birth or naturalization.
> >
> > (2) The child is under the age of eighteen years.
> >
> > (3) The child is residing in the United States in the legal and physical custody of the citizen parent pursuant to a lawful admission for permanent residence.
>
> (b) Subsection (a) shall apply to a child adopted by a United States citizen parent if the child satisfies the requirements applicable to adopted children under section 101(b)(1).

The AAO notes that legal precedent decisions have clearly established that the provisions of the CCA are not retroactive and that the amended provisions of the Act apply only to persons who were

not yet eighteen years old as of February 27, 2001. Because the applicant was over the age of 18 on February 27, 2001, the AAO finds that he is not eligible for the benefits of section 320 of the amended Act. *See Matter of Rodriguez-Tejedor,* 23 I&N Dec. 153 (BIA 2001).

Section 301(a)(7) of the former Act states, in pertinent part that:

> The following shall be nationals and citizens of the United States at birth: . . . a person born outside the geographical limits of the United States . . . of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States . . . for a period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years.

The AAO further finds that the applicant did not acquire U.S. citizenship pursuant to section 301(a)(7) of the former Act, 8 U.S.C. § 1401(a)(7), because he is not the biological child of a U.S. citizen.

The applicant also did not acquire U.S. citizenship under sections 320 or 321 of the former Act, 8 U.S.C. §§ 1431 and 1432, as previously in force prior to February 27, 2001. Sections 320 and 321 of the former Act provided for acquisition of U.S. citizenship upon the naturalization of a parent, not through a native-born U.S. citizen parent.

The AAO also notes that the applicant fails to qualify for U.S. citizenship under section 322 of the former Act, 8 U.S.C. § 1433. Section 322 of the former Act provided, in pertinent part, that:

> (a) A parent who is a citizen of the United States may apply to the Attorney General [now the Secretary, 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) 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 AAO notes that, whether or not an applicant satisfies the requirements set forth in section 322(a) of the former Act, he is required to establish that his application for citizenship was approved, and that he took the oath of allegiance, prior to his 18th birthday. The AAO finds that the applicant in the present case did not meet the requirements set forth in section 322(b) of the former Act, because he did not apply for a certificate of citizenship before he turned 18, because no such application was approved, and because he did not take an oath of allegiance prior to his 18th birthday.

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 his burden and the appeal will be dismissed.

**ORDER:** The appeal is dismissed.