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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services

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FILE:

Office: NEWARK, NJ

Date: AUG 04 2009

IN RE:

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

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.

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

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Newark, New Jersey, 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 December 1, 1983 in the Dominican Republic. The applicant's parents, as reflected in his birth certificate, are [REDACTED] and [REDACTED].

[REDACTED] The applicant claims that his parents were married in 1989. The applicant was admitted to the United States as a lawful permanent resident on December 18, 1992, when the applicant was nine years old. The applicant's father became a U.S. citizen on October 8, 1991, when the applicant was seven years old. The applicant's father passed away February 11, 1993. The applicant seeks a certificate of citizenship based on the claim that he acquired U.S. citizenship through his father.

The field office director concluded, in relevant part, that the applicant had failed to establish that he was in the legal and physical custody of a U.S. citizen parent. The director determined that the applicant was ineligible for U.S. citizenship under section 320 of the Immigration and Naturalization Act, 8 U.S.C. § 1431, as amended. The director also analyzed the applicant's claim pursuant to section 321 of the former Act, 8 U.S.C. § 1432 (repealed), and determined that the applicant did not derive U.S. citizenship. The application was denied accordingly.

On appeal, the applicant maintains that he derived U.S. citizenship because he resided in the United States pursuant to a lawful admission for permanent residence, in his father's legal and physical custody, before his father's death. See Statement of the Applicant on Form I-290B, Notice of Appeal to the AAO and Appellate Brief.

Section 320 of the Act was amended by the Child Citizenship Act of 2000 (CCA), and took effect on February 27, 2001. The CCA benefits all persons who had not yet reached their 18th birthdays as of February 27, 2001. Because the applicant was under 18 years old on February 27, 2001, he meets the age requirement for benefits under the CCA.

Section 320 of the Act, 8 U.S.C. § 1431, states in pertinent part that:

- (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.

The record reflects that the applicant was admitted to the United States as a lawful permanent resident in 1992, and that his father became a U.S. citizen in 1991. The applicant's father passed away in 1993. The applicant's 18th birthday was on December 1, 2001.

The applicant claims that he acquired U.S. citizenship automatically pursuant to section 320 of the Act, as amended by the CCA. The provisions of the CCA, however, are not retroactive. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). The amended provisions of section 320 of the Act apply only prospectively to persons who were under the age of 18, and who fulfilled the requirements as of February 27, 2001. *See* USCIS Adjudicator's Field Manual at § 71; *see also* Policy Memorandum 75-A, *Update of the Implementation Instructions for Title I of the Child Citizenship Act of 2000, Public Law 106-395 (CCA)* (July 2, 2001) (stating that "[t]he CCA becomes effective on February 27, 2001 and is the earliest date on which any person can become a U.S. citizen under the CCA. Only those persons who meet all of the requirements of the CCA on or after February 27, 2001 will become citizens under the CCA"). Because the applicant was not in his father's legal or physical custody on February 27, 2001, he did not automatically acquire U.S. citizenship when the CCA became effective.¹

The AAO notes that, as is well established, "[t]here must be strict compliance with all the congressionally imposed prerequisites to the acquisition of citizenship." *Fedorenko v United States*, 449 U.S. 490, 506 (1981). The applicant in the present case has not established that he was in the legal custody of her father. Accordingly, the AAO finds that she did not acquire citizenship pursuant to the section 320 of the Act, 8 U.S.C. § 1431.

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 and the appeal will be dismissed.

ORDER: The appeal is dismissed.

¹ The applicant also did not derive U.S. citizenship under section 321 of the former Act, 8 U.S.C. § 1432 (repealed), because his mother was not a U.S. citizen. Section 321 required the naturalization of both parents unless the non-citizen parent was deceased or where the parents were legally separated (and the applicant was in the custody of the citizen parent) or where the applicant was born out of wedlock (and was seeking to derive U.S. citizenship through the mother).