



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: JACKSONVILLE, FL Date: **DEC 03 2009**

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under Section 321 of the Immigration and Nationality Act; 8 U.S.C. § 1432 (2000).

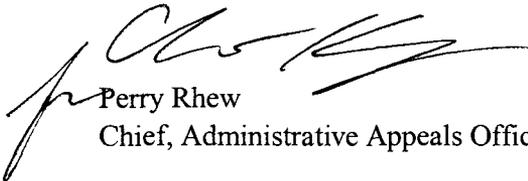
ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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).


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Jacksonville, Florida, 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 September 16, 1958 in the Philippines. The applicant's parents were [REDACTED]. The applicant's parents were married in 1934. The applicant's father became a U.S. citizen upon his naturalization on September 9, 1974, when the applicant was 15 years old. The applicant was admitted to the United States as a lawful permanent resident on March 16, 1974, when he was 15 years old. The applicant seeks a certificate of citizenship claiming that he derived U.S. citizenship upon his father's naturalization.

The field office director found, in relevant part, that the applicant did not derive U.S. citizenship because he failed to establish that both of his parents were U.S. citizens. On appeal, the applicant states that his father's naturalization process was "fast tracked" due to his service in the U.S. Military. See Notice of Appeal to the AAO, Form I-290B, and accompanying documents. The applicant claims that his October 1974 Application for Certificate of Citizenship, Form N-600, was "accepted." *Id.*

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. See *Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1029 (9th Cir. 2000) (citations omitted). The Child Citizenship Act of 2000 (CCA), Pub. L. 106-395, 114 Stat. 1631 (Oct. 30, 2000), amended sections 320 and 322 of the Act, and repealed section 321 of the Act. The provisions of the CCA took effect on February 27, 2001, are not retroactive, and apply only to persons who were not yet 18 years old as of February 27, 2001. See CCA § 104. The applicant was born in 1958. Because the applicant was over the age of 18 on February 27, 2001, he is not eligible for the benefits of the amended Act. See *Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). Section 321 of the former Act, 8 U.S.C. § 1432 (2000), is therefore applicable to this case.

Section 321 of the former Act, 8 U.S.C. § 1432 (2000), 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 record reflects that the applicant's parents were married in 1934. The applicant's mother passed away in 1980. *See* Death Certificate of Applicant's Mother. The applicant's father naturalized when the applicant was 15. The applicant was admitted to the United States as a lawful permanent resident when he was 15. His 18th birthday was on September 16, 1976.

The AAO finds that the applicant did not derive U.S. citizenship under section 321 of the former Act, 8 U.S.C. § 1432 (2000), or any other provision of the Act. The applicant was over the age of 18 when his mother passed away. As the child of married parents, the applicant was required to establish that both his parents naturalized prior to his 18th birthday in order to derive U.S. citizenship pursuant to section 321 of the former Act. The record indicates that only the applicant's father became a U.S. citizen. The applicant therefore did not derive U.S. citizenship.

The AAO notes that the record indicates that the applicant's father served in the U.S. military. Such service would likely have entitled him to expedited naturalization, but there are no provisions of the Act under which the applicant would have automatically derived U.S. citizenship upon his naturalization alone. As noted above, the applicant was required to establish that both parents were naturalized in order to derive U.S. citizenship pursuant to section 321 of the former Act.

The AAO notes that the applicant's administrative file indicates that, in the context of adjudicating the applicant's October 1974 Form N-600, Application for Certificate of Citizenship, the applicant's father was advised that his wife's naturalization was also required and that the Form N-600 was then withdrawn. There is no evidence in the record to suggest that any other application was approved, or that the applicant is otherwise eligible for U.S. citizenship under any other provision of law.

The requirements for citizenship, as set forth in the Act, are statutorily mandated by Congress, and that USCIS lacks statutory authority to issue a Certificate of Citizenship when an applicant fails to meet the relevant statutory provisions set forth in the Act. A person may only obtain citizenship in strict compliance with the statutory requirements imposed by Congress. *INS v. Pangilinan*, 486 U.S. 875, 885 (1988); *see also United States v. Manzi*, 276 U.S. 463, 467 (1928) (stating that "citizenship is a high privilege, and when doubts exist concerning a grant of it ... they should be resolved in favor of the United States and against the claimant"). Moreover, "it has been universally accepted that the burden is on the alien applicant to show his eligibility for citizenship in every respect." *Berenyi v. District Director, INS*, 385 U.S. 630, 637 (1967).

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 cannot establish that both his parents naturalized as is required by section 321(a) of the former Act, 8 U.S.C. § 1432(a). He therefore cannot meet his burden of proof and his appeal will be dismissed.

ORDER: The appeal is dismissed.