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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: HOUSTON, TX Date: FEB 17 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.

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).

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Houston, Texas and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on January 25, 1979 in El Salvador. The applicant's mother, , also born in El Salvador, became a naturalized U.S. citizen on May 1, 1996, when the applicant was 17 years old. The applicant's father, , was at the time of his birth a citizen of El Salvador, and the record does not indicate that he has acquired another nationality. The applicant's parents never married. The applicant was admitted to the United States as a lawful permanent resident on August 3, 1993, when he was 14 years old. The applicant seeks a certificate of citizenship pursuant to former section 321 of the Immigration and Nationality Act (INA or "the Act"), 8 U.S.C. § 1432, based on his mother's naturalization.

The section of law under which the applicant contends he has established U.S. citizenship was repealed by the Child Citizenship Act of 2000 (CCA), effective as of February 27, 2001.[1] However, any person who would have acquired automatic citizenship under its provisions prior to February 27, 2001 may apply for a certificate of citizenship at any time. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). Therefore, the issue before the AAO is whether the applicant has established that he acquired U.S. citizenship under the provisions of section 321 of the Act prior to February 27, 2001.

Former section 321 of the Act, 8 U.S.C. § 1432, provided 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:
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> (1) The naturalization of both parents; or
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> (2) The naturalization of the surviving parent if one of the parents is deceased; or
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> (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

[1] The CAA benefited individuals who had not yet reached their 18th birthdays as of February 27, 2001. Because the applicant was 22 years old on February 27, 2001, he does not meet the age requirement for benefits under the CAA.

> 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 district director found that as the applicant was not eligible to benefit from his mother's naturalization under section 321(a)(3) of the Act as his father had registered his birth within five days of its occurrence and his paternity had, therefore, been established by legitimation. She denied the application accordingly. *Decision of the District Director*, dated September 27, 2006.

On appeal, counsel contends that the applicant is eligible for a certificate of citizenship under the second prong of section 321(a)(3) of the Act as the child of a naturalized mother whose paternity has not been established by legitimation. He states that while the applicant's father established paternity by registering the applicant's birth, paternity was not established through the affirmative act of legitimation required by the intent of section 321(a)(3) of the Act. Counsel asserts that, as Salvadoran law does not distinguish between legitimate and illegitimate children, the applicant's birth certificate is evidence of paternity but not legitimation. He contends that the distinction between asserting paternity and the act of legitimation can be seen in other parts of the Act and in the Code of Federal Regulations where legitimation is an issue. Counsel points to the requirements for submitting an immigrant visa petition for a child, as stated in the regulation at 8 C.F.R. § 204.2(d)(2), contending that the lack of a parent-child relationship between the applicant and his father offers proof that legitimation has not occurred. The mere assertion of paternity on a birth certificate, counsel states, does not legitimate a child and the applicant's birth certificate does not qualify him as a legitimated child under the Act. *Counsel's brief*, dated October 24, 2006. Counsel's reasoning is not, however, persuasive.

In *Matter of Moraga*, 23 I&N Dec. 195, 198 (BIA 2001), the Board of Immigration Appeals (BIA) concluded that, as of December 16, 1983, changes in Salvadoran law placed children born out of wedlock in the same legal position as children born in wedlock. The BIA, therefore, found that a child born in El Salvador after December 16, 1983 or who, on that date, was less than 18 years of age qualified as a legitimated child for visa petition purposes once paternity was established.

In the present case, the record establishes that the applicant was born out of wedlock on January 15, 1979 and that, on January 30, 1979, registered his birth, identifying himself as the applicant's father. Therefore, as the applicant was born after December 16, 1983 and his paternity was established through his father's registration of his birth, the record establishes he was legitimated under Salvadoran law.

Although counsel contends that the applicant remains eligible for a certificate of citizenship under section 321(a)(3) as his paternity was not established through a distinct, affirmative legitimation process separate from the December 16, 1983 change in Salvadoran family law, counsel has submitted and the AAO finds no legal precedent to support this position. Instead, the AAO notes that in *Wedderburn v. INS*, 215 F.3d 795 (7th Cir. 2000), the court determined that, in proceedings involving a petitioner who, like the applicant, was legitimated as a result of a change in the law of his country of birth, the second prong of section 321(a)(3) of the Act "drops out." The court found that under section 321(a) of the Act, such "[l]egitimated children become citizens if both parents naturalize, if the surviving parent naturalizes, or if the parent having 'legal custody' naturalizes following the parents' 'legal separation.'" Moreover, the AAO finds s signing of

the applicant's birth registration establishing his paternity to be an affirmative legitimating act in this matter.

With regard to counsel's belief that the record's failure to document a child-parent relationship between the applicant and his natural father is relevant to his legitimation, the AAO observes that counsel has failed to distinguish between the requirements imposed by Title II of the Act, "Immigration," on individuals seeking immigration benefits and those that must be met by the applicant under Title III, "Nationality and Naturalization." The applicant in this proceeding seeks a certificate of citizenship, the requirements for which are set forth in Title III of the Act. Title II of the Act does not apply to the applicant and he is not, therefore, subject to the regulatory requirements of 8 C.F.R. § 204.2(d)(2).

The applicant is seeking a certificate of citizenship under section 321(a)(3) of the Act as the child of a naturalized mother whose paternity has not been established through legitimation. The record, however, demonstrates that the applicant's father formally acknowledged the applicant as his son five days after the applicant's birth, thereby legitimating him for immigration purposes. *See Matter of Moraga, supra.* Accordingly, the applicant is not eligible for a certificate of citizenship under section 321(a) of the Act.

The AAO notes "[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). As previously noted, the regulation at 8 C.F.R. § 341.2 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." See *Matter of E-M-*, 20 I&N Dec. 77 (Comm. 1989). The applicant has not met his burden in this proceeding. The appeal will, therefore, be dismissed.

ORDER: The appeal is dismissed.