

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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



PUBLIC COPY

U.S. Citizenship  
and Immigration  
Services

62



FILE: [REDACTED] Office: HOUSTON, TX Date: **JUL 17 2009**

IN RE: [REDACTED]

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:

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.

John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Field Office Director, Houston, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded to the director for action consistent with this decision.

The record reflects that the applicant was born on October 29, 1974 in Spain. His birth certificate indicates that his parents are [REDACTED] and [REDACTED]. The applicant's mother became a U.S. citizen upon her naturalization on October 4, 1991, when the applicant was 16 years old. The applicant's parents were married in December 1974, and divorced in 2001. The applicant was admitted to the United States as a lawful permanent resident in November 1974. The applicant seeks a certificate of citizenship pursuant to section 321 of the former Immigration and Naturalization Act (the former Act), 8 U.S.C. § 1432 (repealed), claiming that he derived citizenship through his mother.

The field office director denied the application finding that the applicant had failed to submit the requested documentation. On appeal, the applicant states that he automatically acquired U.S. citizenship upon his mother's naturalization because he was less than 18 years old at the time. The appeal is accompanied, in relevant part, by a copy of the applicant's mother's naturalization certificate.

"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." *Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1029 (9<sup>th</sup> Cir. 2000) (citations omitted). The applicant in this case was born in 1974. The applicant was over 18 on February 27, 2001, the effective date of the Child Citizenship Act of 2000 (CCA). The CCA is not retroactive, and therefore not applicable to the applicant's case. See *Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). Section 321 of the former Act, 8 U.S.C. § 1432, is therefore applicable to this case.

Section 321 of the former Act, 8 U.S.C. § 1432, 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 AAO finds that the applicant has established that his mother naturalized and that he was admitted to the United States as a lawful permanent resident prior to his 18<sup>th</sup> birthday. The AAO notes, however, that the applicant's parents were married in 1974, and not divorced until 2001 (after the applicant's 18<sup>th</sup> birthday). There is no indication in the record that the applicant's father is a U.S. citizen. Therefore, the applicant cannot establish eligibility for U.S. citizenship under section 321(a)(1) of the former Act.

Additionally, the AAO notes that, although the applicant was born out of wedlock, his parents soon married and his father's paternity was established by legitimation. *See Matter of C-*, 9 I&N Dec. 242 (BIA 1962)(parents must marry to legitimate child in Spain). Therefore, the applicant also cannot establish eligibility for U.S. citizenship under section 321(a)(3) of the former Act. There is also no indication in the record that the applicant was eligible for U.S. citizenship under any other provision of the Act.

The AAO nevertheless notes that the record contains a copy of the applicant's U.S. passport. In *Matter of Villanueva*, 19 I&N Dec. 101 (BIA 1984), the Board of Immigration Appeals (Board) held that a valid U.S. passport is conclusive proof of U.S. citizenship. Specifically, the Board held in *Matter of Villanueva* that:

unless void on its face, a valid United States passport issued to an individual as a citizen of the United States is not subject to collateral attack in administrative immigration proceedings but constitutes conclusive proof of such person's United States citizenship.

Where, as here, the applicant has failed to establish statutory eligibility for U.S. citizenship, a Certificate of Citizenship cannot be issued. The USCIS Adjudicator's Field Manual at § 71.1(e) instructs that

An unexpired United States passport issued for 5 or 10 years is now considered prima facie evidence of U.S. citizenship. Because it does not provide the actual basis upon which citizenship was acquired or derived, the submission of additional documentation may be required or the passport file may be requested. If after review there are differences or discrepancies between the USCIS information and the Passport Office records which would indicate that the application should not be approved, no action should be taken until the Passport Office has an opportunity to review and decide whether to revoke the passport.

The matter must therefore be remanded to the director to request that the Passport Office review and decide whether to revoke the applicant's passport. The director shall issue a new decision once the Passport Office's review is completed and, if adverse to the applicant, certify the decision to the AAO for review.

**ORDER:** The matter is remanded to the director for action consistent with this decision.