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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: NEW ORLEANS, LA

Date:

JUL 29 2009

IN RE:

Applicant:



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.

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, New Orleans, Louisiana, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was August 29, 1978 in Mexico. The applicant parents, as reflected in his birth certificate, are [REDACTED] and [REDACTED]. The applicant's parents were married on November 5, 1990. The applicant's mother became a U.S. citizen upon her naturalization on April 11, 1996. The applicant's 18th birthday was on August 29, 1996. The applicant presently seeks a certificate of citizenship claiming that he derived U.S. citizenship from his father pursuant to section 321 of the former Immigration and Nationality Act (the former Act), 8 U.S.C. § 1432 (repealed).

The field office director concluded that the applicant failed to establish that he was eligible for U.S. citizenship because, in relevant part, he was not admitted for lawful permanent residency. The application was denied accordingly.

On appeal, the applicant maintains, in relevant part, that he was under 18 when his mother naturalized. *See Applicant's Appeal Brief.*¹

"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 (9th Cir. 2000) (citations omitted). The applicant in this case was born in 1978. The applicant was over 18 on the effective date of the Child Citizenship Act of 2000 (CCA).² 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

¹ The applicant's brief includes a discussion of the *Matter of Baires-Larios*, 24 I&N Dec. 467 (BIA 2008) and *Bustamante-Barrera v. Gonzalez*, 447 F.3d 388 (5th Cir. 2006). These decisions, which mostly address issues of custody, are inapplicable to the instant case. At issue in this case is whether the applicant was admitted for lawful permanent residence, not whether he was in his mother's custody or whether his mother's naturalization occurred prior to his 18th birthday.

² The CCA, which amended sections 320 and 322 of the Act, and repealed section 321 of the former Act, benefits all persons who have not yet reached their eighteenth birthdays as of February 27, 2001.

- (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 applicant was not admitted to the United States as a lawful permanent resident and is not "residing in the United States pursuant to a lawful admission for permanent residence" as required by section 321(a)(5) of the former Act, 8 U.S.C. § 1431(a)(5). Accordingly, the applicant did not derive U.S. citizenship pursuant to section 321 of the former Act.³

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). 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). Given the fact that the applicant's was not admitted for permanent residence, he did not derive citizenship under section 321 of the former Act, 8. U.S.C. § 1432, and is ineligible for citizenship under this or any other provision of the Act.⁴

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 in this case has not met his burden. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.

³ Because the applicant is not a lawful permanent resident, the AAO need not address the issue of legitimation, of custody, or of his parents' marriage.

⁴ The director properly noted that the applicant did not acquire U.S. citizenship at birth under section 309(c) of the Act, 8 U.S.C. § 1409(c), because, among other things, his mother was not a U.S. citizen at the time of the applicant's birth.