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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

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FILE:

Office: ANCHORAGE

Date: MAR 05 2009

IN RE:

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, Anchorage, Alaska, 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 May 17, 1980 in Sierra Leone. The birth certificate indicates that his parents are [REDACTED] and [REDACTED]. The applicant's parents were never married to each other. The applicant's father became a U.S. citizen upon his naturalization on January 26, 1996, when the applicant was 15 years old. The applicant's mother is not a U.S. citizen. The applicant was admitted to the United States as a lawful permanent resident on June 10, 1985, when he was 5 years old. 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citizenship pursuant to section 321 of the former Immigration and Naturalization Act (the former Act), 8 U.S.C. § 1432 (repealed) claiming that he derived citizenship through his father.

The field office director denied the applicant's citizenship claim upon finding that he was not in his father's sole legal custody. The director noted that the applicant was required to establish that both his parents were U.S. citizens and that he was residing in the United States as a lawful permanent resident. The application was accordingly denied.

On appeal, the applicant's father contends that he is not required to establish sole legal custody over the applicant. *See* Statement on Form I-290B, Notice of Appeal to AAO. The applicant's father notes that the applicant has been in his custody for 23 years and therefore "deserves" to become a U.S. citizen. *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." *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 1980. The applicant was over 18 on the effective date of the Child Citizenship Act of 2000. 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 father naturalized and that he was admitted to the United States as a lawful permanent resident prior to his 18<sup>th</sup> birthday. The applicant's parents were never married to each other, and the applicant's mother is not a U.S. citizen. Section 321 of the former Act does not provide for derivation of U.S. citizenship through the father alone in the case of an out of wedlock child. See Section 321(a)(3) of the Act, 8 U.S.C. 1432(a)(3)(repealed). Thus, the applicant is statutorily ineligible to derive U.S. citizenship from his father.

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 has failed to meet his burden.** He is therefore not eligible for U.S. citizenship under section 321 of the former Act, 8 U.S.C. § 1431, and the appeal will be dismissed.

**ORDER:** The appeal is dismissed.