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



U.S. Citizenship  
and Immigration  
Services

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FILE:

Office: SAN FRANCISCO

Date:

IN RE:

Applicant:

MAR 24 2009

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:

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, San Francisco, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born in Afghanistan. The applicant's parents, [REDACTED] and [REDACTED], became U.S. citizens upon their naturalization in April 1996. The applicant was admitted to the United States as a refugee, and became a lawful permanent resident as of May 23, 1989. The applicant's date of birth is at issue. The applicant presently seeks a certificate of citizenship claiming that he derived U.S. citizenship upon his parents' naturalization pursuant to section 321 of the former Immigration and Nationality Act (the former Act), 8 U.S.C. § 1432 (repealed).

The field office director found that the applicant had failed to establish that he was under 18 years of age when his parents naturalized in 1996. Upon a thorough review of the record, including the applicant's and his parents' immigration files, the applicant's marriage certificate, and the applicant's child's birth certificate, the field office director concluded that the applicant had failed to establish that he was born in 1981 as claimed. The applicant was therefore found to be ineligible for citizenship under section 321 of the former Act, 8 U.S.C. § 1432, and the application was accordingly denied.

On appeal, the applicant, through counsel, contends that he was under 18 years of age when his parents naturalized in 1996. In support of his claim, the applicant submits, in relevant part, a dentist's report, a 2008 identification record, as well as several signed declarations and state juvenile court records. The applicant maintains that he was born in 1981, and that his parents concocted a 1977 date of birth when he immigrated to the United States. He indicates that he continues to use the 1977 date of birth because his immigration documents have not been corrected, and for the sake of consistency. He further claims that he is eligible for citizenship because the immigration judge terminated his removal proceedings. The Immigration Judge's orders are in the record.

"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 either in 1977 or 1981. Sections 321 of the former Act, 8 U.S.C. § 1432, is the applicable law in this case.<sup>1</sup>

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<sup>1</sup> The Child Citizenship Act of 2000 (CCA) amended sections 320 and 322 of the Act, 8 U.S.C. §§ 1431 and 1433, and repealed section 321 of the Act, 8 U.S.C. § 1432. The CCA took effect on February 27, 2001, and benefits all persons who had not yet reached their 18th birthdays as of February 27, 2001. See *Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). Because, whether he was born in 1977 or 1981, the applicant was over 18 years of age on February 27, 2001, he does not meet the age requirement for benefits under the CCA.

Section 321 of the former Act 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 indicates that the applicant's parents became a U.S. citizens upon her naturalizations in April 1996, and that the applicant was admitted as a lawful permanent resident of the United States as of May 23, 1989. The question remains whether the applicant was born in 1977 or in 1981.<sup>2</sup>

The requirements for citizenship, as set forth in the Act, are statutorily mandated by Congress, and CIS 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).

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<sup>2</sup> The AAO notes that there is a further discrepancy regarding the applicant's specific date of birth, whether September 10 or 6, 1977 or June 18 or September 3, 1981. This discrepancy is not relevant. If the applicant was born on either day in 1977 his age upon his parents' naturalization was 21. If the applicant was born on either day in 1981, his age upon his parent's naturalization was 15.

After a careful, detailed review of the entire record, including the applicant's submissions on appeal, the AAO cannot conclude that the applicant was born, or likely born, in 1981. The AAO is without jurisdiction, authority or expertise, to evaluate the applicant's medical or anthropological claims that he was under 18 years old in 1996. The AAO must defer to the documents in the applicant's immigration record, including his refugee entry documents and his lawful permanent resident record, and other contemporaneous documentation all of which consistently show that the applicant was born in 1977.

The AAO notes that USCIS is not bound by the immigration judge's finding regarding the applicant's U.S. citizenship status. The immigration judge does not have jurisdiction or authority to declare that an alien is a U.S. citizen. Rather, the immigration judge's termination of removal proceedings against the applicant was based on the judge's jurisdictional determination that the U.S. Department of Homeland Security had failed to meet its burden of proving the applicant's alienage and deportability by clear, convincing and unequivocal evidence. *See Murphy v. INS*, 54 F.3d 605 (9<sup>th</sup> Cir. 1995) (holding that in deportation proceedings, the government must prove alienage by clear, unequivocal and convincing evidence). *Minasyan v. Gonzalez*, 401 F.3d 1069 (9<sup>th</sup> Cir. 2005) clarifies further that an immigration judge does not have authority to declare that an alien is a citizen of the United States, and that such jurisdiction rests with the USCIS citizenship unit and with the federal courts. 8 C.F.R. § 341.3(c), specifies further that USCIS has jurisdiction over certificate of citizenship proceedings, with the burden of proof being on the applicant to establish his or her claim to U.S. citizenship by a preponderance of the evidence.

The applicant in this case did not derive U.S. citizenship upon his parents' naturalization under section 321 of the former Act, 8 U.S.C. § 1432, or any other provision of the Act. The applicant has not met his burden of proof, and the appeal will therefore be dismissed.

**ORDER:** The appeal is dismissed.