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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: [REDACTED] Office: NEW YORK Date: MAY 19 2009

IN RE: Applicant: [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:



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 District Director, New York, New York, 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 September 18, 1969. She attained the age of 18 on **September 18, 1987. The applicant's birth certificate indicates that her parents are [REDACTED] and [REDACTED]** The applicant's parents became U.S. citizens upon their naturalizations on May 17, 1983 and December 5, 1985, respectively. The applicant was paroled into the United States in 1979. She has not been admitted to the United States as a lawful permanent resident. The applicant seeks a Certificate of Citizenship claiming that she derived U.S. citizenship upon her parents' naturalization.

The District Director denied the applicant's claim finding that she failed to acquire U.S. citizenship because she was not admitted to lawful permanent residence prior to her 18th birthday.

On appeal, the applicant maintains, in relevant part, that she derived U.S. citizenship because she began to reside permanently in the United States in 1979. *See* Appeal Brief.

"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 1969. Section 321 of the former Immigration and Nationality Act (the former Act), 8 U.S.C. § 1432 (repealed) is therefore applicable to the applicant's claim.¹

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-

¹ The Child Citizenship Act of 2000 (the 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). The applicant was over the age of 18 on February 27, 2001, she therefore does not meet the age requirement for benefits under the CCA.

(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.

8 U.S.C. § 1432.

The applicant has not been admitted to lawful permanent residency in the United States. Nevertheless, she claims that she began residing here permanently in 1979 when she was paroled into the United States.

The applicant's interpretation of section 321(a)(5) of the former Act is mistaken. The plain language of the statute requires that the applicant be residing in the United States permanently. By definition, a parolee or a refugee is not in the United States permanently. Section 101(a)(20) of the Act, 8 U.S.C. § 1101(a)(20) defines the term, "lawfully admitted for permanent residence" as, "[t]he status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed." The phrase "or thereafter begins to reside permanently in the United States while under the age of 18 years" does not allow for derivation of U.S. citizenship by an individual, like the applicant, who was never accorded the benefit of permanently residing in the United States.²

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 did not meet her burden. She was not admitted to the United States as a lawful permanent resident prior to her 18th birthday. Therefore, she was statutorily ineligible to derive U.S. citizenship under section 321 of the former Act, 8 U.S.C. § 1432. The appeal will be dismissed.

ORDER: The appeal is dismissed.

² The phrase instead allows for derivation of U.S. citizenship in the case of an individual who is admitted as a lawful permanent resident after his or her parent's naturalization, but "while under the age of 18 years."