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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: INDIANAPOLIS, IN

Date:

**MAY 19 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, Indianapolis, Indiana, 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 June 7, 1966 in Korea. He attained the age of 18 on June 7, 1984. The record indicates that the applicant's parents are \_\_\_\_\_ and \_\_\_\_\_

The applicant was adopted by his step-father, \_\_\_\_\_ on October 15, 1975. The applicant's step-father is a native-born U.S. citizen. The applicant's mother, now known as \_\_\_\_\_, became a U.S. citizen upon her naturalization on October 6, 2006. The applicant was admitted to the United States as a lawful permanent resident on July 2, 1975. The applicant seeks a Certificate of Citizenship claiming that he derived U.S. citizenship under section 321 of the former Immigration and Nationality Act (the former Act), 8 U.S.C. § 1432 (repealed).

The Field Office Director denied the applicant's claim finding that he was over the age of 18 years when his mother naturalized. Thus, the director found that the applicant did not derive U.S. citizenship and the application was accordingly denied.

On appeal, the applicant maintains that he "was adopted in 1975 by an American Army soldier ... have lived as a U.S. citizen since 1975 [and] should have the same rights ...." See Statement of the Applicant on the Form I-290B, Notice of Appeal to the AAO.

"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 1966. 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.<sup>1</sup>

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

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<sup>1</sup> 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, he therefore does not meet the age requirement for benefits under the CCA.

(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.

(b) Subsection (a) of this section shall apply to an adopted child only if the child is residing in the United States at the time of naturalization of such adoptive parent, in the custody of his adoptive parents, pursuant to a lawful admission for permanent residence.

8 U.S.C. § 1432.

The definition of “child” applicable to the citizenship and nationality provisions in Title III of the Act is contained in section 101(c) of the Act, 8 U.S.C. § 1101(c), and provides as follows:

...an unmarried person under twenty-one years of age and includes a child legitimated under the law of the child’s residence or domicile, or under the law of the father’s residence or domicile, whether in the United States or elsewhere, and except as otherwise provided in section 320 and 321 of the title III, a child adopted in the United States, if such legitimation or adoption takes place before the child reaches the age of 16 years . . . and the child is in the legal custody of the legitimating or adopting parent or parents at the time of such legitimation or adoption.

In contrast to Section 101(b) of the Act, 8 U.S.C. § 1101(b), the definition of “child” for Title III (citizenship and nationality) purposes does not include a “step-child.” *See Matter of Guzman-Gomez*, 24 I&N Dec. 824 (BIA 2009).

The applicant was admitted to the United States as a lawful permanent resident in 1975, at the age of nine. The applicant was adopted by his step-father, a native-born U.S. citizen, in 1975. The applicant’s mother became a U.S. citizen in 2006.

Section 321(a) of the former Act does not permit derivation of U.S. citizenship other than upon a parent’s naturalization. There is no provision in the former Act for acquisition of U.S. citizenship from an adoptive, native-born parent. The applicant therefore did not derive U.S. citizenship through his native-born, adoptive father. The applicant also did not derive U.S. citizenship upon the naturalization of his mother (because he was over the age of 18 when she naturalized). The

applicant is therefore ineligible for a certificate of citizenship under any provision of the Act, including section 321 of the former Act, 8 U.S.C. § 1432 (repealed).

The requirements for citizenship, as set forth in the Act, are statutorily mandated by Congress, and that USCIS 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). Even courts may not use their equitable powers to grant citizenship, and any doubts concerning citizenship are to be resolved in favor of the United States. *Id.* at 883-84; *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). The applicant in this case did not meet his burden. He is 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.