



U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE:

[Redacted]

Office: LAS VEGAS, NV

Date: OCT 14 2009

IN RE:

[Redacted]

APPLICATION: Application for Certificate of Citizenship pursuant to Section 321 of the Nationality Act,
8 U.S.C. § 1432, now repealed

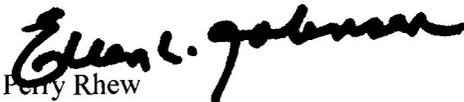
ON BEHALF OF APPLICANT:

[Redacted]

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).



Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Las Vegas, Nevada and the matter 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 15, 1963 in Iran. The applicant's father, [REDACTED] now [REDACTED] became a naturalized U.S. citizen on May 20, 1981, when the applicant was 17 years old. The applicant's mother, [REDACTED] now [REDACTED] naturalized on July 24, 1981, after the applicant's 18th birthday. The applicant was admitted to the United States as a lawful permanent resident on May 7, 1970, when he was six years old. The applicant, seeks a certificate of citizenship based on the naturalization of his parents, pursuant to former section 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432.

The section of law under which the applicant contends he has established U.S. citizenship was repealed by the Child Citizenship Act of 2000 (CCA), effective as of February 27, 2001. However, any person who would have acquired automatic citizenship under its provisions prior to February 27, 2001 may apply for a certificate of citizenship at any time. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). Therefore, the issue before the AAO is whether the applicant has established that he acquired U.S. citizenship under the provisions of former section 321(a) of the Act prior to February 27, 2001.

Section 321 of the Act, 8 U.S.C. § 1432, provided 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 field office director denied the application based on her determination that the applicant had failed to establish that both his parents had naturalized prior to his 18th birthday. On appeal, counsel

contends that the applicant should be considered a derivative citizen under the doctrine of equitable estoppel as he was the *victim of affirmative misconduct*. Counsel asserts that, as a U.S. district court judge misled the applicant into thinking he had acquired U.S. citizenship at the time of his father's naturalization, his application for a certificate of citizenship should be granted *nunc pro tunc*.¹

The AAO will first consider counsel's claim that the doctrine of equitable estoppel allows for the approval of the applicant's application. It notes that, like the Board of Immigration Appeals, it is without the authority to apply the doctrine of equitable estoppel. Estoppel is an equitable form of relief that is available only through the courts. The jurisdiction of the AAO is limited to that authority specifically granted to it by the Secretary, Department of Homeland Security. *See* DHS Delegation Number 0150.1 (effective March 1, 2003); *see also* 8 C.F.R. § 2.1 (2004). The jurisdiction of the AAO is limited to those matters described at 8 C.F.R. § 103.1(f)(3)(E)(iii) (as in effect on February 28, 2003). Accordingly, the AAO has no authority to address the applicant's equitable estoppel claim and will not consider it in this proceeding.

To be eligible for a certificate of citizenship under former section 321 of the Act, the applicant must prove that section 321 requirements were fulfilled prior to his or her 18th birthday, regardless of the order in which they occurred. *Matter of Baires-Larios*, 24 I&N Dec. 467 (BIA 2008). In the present case, the applicant's parents are both living and have not been divorced or legally separated. Therefore, he must establish that their naturalizations, as well as his admission to the United States for permanent residence took place prior to his 18th birthday. While the record indicates that the applicant's admission as a lawful permanent resident and his father's naturalization occurred before he turned 18 years of age, his mother's naturalization did not. Accordingly, he is not eligible for a certificate of citizenship under former section 321 of the Act.

The AAO notes "[t]here must be strict compliance with all the congressionally imposed prerequisites to the acquisition of citizenship." *Fedorenko v United States*, 449 U.S. 490, 506 (1981). As previously noted, the regulation at 8 C.F.R. § 341.2 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." *See Matter of E-M*, 20 I&N Dec. 77 (Comm. 1989). The applicant has not met his burden in this proceeding. The appeal will, therefore, be dismissed.

ORDER: The appeal is dismissed.

¹ The AAO notes that counsel's assertion that the applicant relied on the judge's statement that he was a U.S. citizen "from that time to the present" is contradicted by the Form N-400 Application for Naturalization, filed on October 12, 1996 and the Form I-90 Application to Replace Permanent Resident Card, filed on November 17, 2004. Both forms indicate that the applicant was aware of his status as a Lawful Permanent Resident years after his father's naturalization on May 20, 1981.