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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



U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED] Office: NEW YORK, NY Date:

SEP 30 2009

IN RE: [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:

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, 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 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 January 18, 1945 in Ireland. The applicant's mother, [REDACTED], became a U.S. citizen upon her naturalization on March 25, 1957. The applicant's father was not a U.S. citizen. The applicant's parents were married in 1938. The applicant claims that he entered the United States as an immigrant under his mother's passport in 1949. He seeks a certificate of citizenship claiming that he acquired U.S. citizenship upon his mother's naturalization.

The district director concluded that the applicant was not eligible for citizenship under section 321 of the former Immigration and Nationality Act (the former Act), 8 U.S.C. § 1432. The director's determination was based upon the finding that the applicant had not been admitted as a lawful permanent resident and that his father did not become a U.S. citizen prior to his 18<sup>th</sup> birthday. The application was accordingly denied.

On appeal, the applicant maintains that he is entitled to U.S. citizenship. The applicant states that he arrived in the United States as a lawful permanent resident in 1949. See Statement of the Applicant on Form I-290B, Notice of Appeal to AAO. The applicant further states that his mother "had legal and factual custody of him at the time of her naturalization." *Id.* He notes also that his siblings and wife are U.S. citizens, and that he is a Vietnam Veteran. *Id.*

The AAO notes that "[t]he 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 was born on 1945. Section 314 of the Nationality Act of 1940 (the Nationality Act) is applicable to this case.<sup>1</sup>

Under section 314 of the Nationality Act, a child born abroad to alien parents, becomes a U.S. citizen upon fulfillment of the following conditions:

- (a) The naturalization of both parents; or
- (b) The naturalization of the surviving parent if one of the parents is deceased; or
- (c) The naturalization of the parent having legal custody of the child where there has been a legal separation of the parents; and if –
- (d) *Such naturalization takes place while such child is under the age of eighteen years; and*
- (e) Such child is residing in the United States at the time of the naturalization of the parent last naturalized under section (a) of this section, or the parent naturalization under subsection (b)

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<sup>1</sup> The Child Citizenship Act of 2000 (CCA), which took effect on February 27, 2001, is not applicable to the applicant's case because he was over 18 years old on its effective date. See *Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). Section 321 of the former Act, 8 U.S.C. § 1432, is also inapplicable as it was not in effect until December 23, 1952.

or (c) of this section, or thereafter begins to reside permanently in the United States while under the age of eighteen years ...

The record reflects that the applicant's mother naturalized in 1957, prior to the applicant's 18<sup>th</sup> birthday. Nevertheless, there is no evidence in the record to establish that the applicant was admitted to the United States as a lawful permanent resident or, more importantly, that his father also naturalized such that he could fulfill the requirement of subsection 314(a) of the Nationality Act. The AAO therefore finds that the applicant did not derive U.S. citizenship upon his mother's naturalization.

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); *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. The applicant in the present case has not met his burden and the appeal will be dismissed.

**ORDER:** The appeal is dismissed.