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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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[REDACTED]

FILE:

Office: RALEIGH, NC

Date:

APR 16 2010

IN RE:

Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under Former Section 321 of the Immigration and Nationality Act; 8 U.S.C. § 1432 (2000).

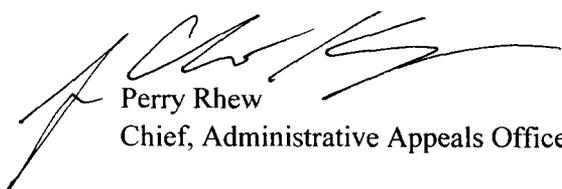
ON BEHALF OF APPLICANT:

[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, 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, Raleigh, North Carolina, 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 23, 1967 in Vietnam. The applicant's mother became a U. S. citizen upon her naturalization on September 24, 1975, when the applicant was eight years old. The applicant was paroled into the United States in 1975. Her status was adjusted to that of a lawful permanent resident of the United States on March 25, 2005, when she was 38 years old. The applicant seeks a certificate of citizenship claiming that she derived U.S. citizenship through her mother.

The field office director denied the application finding that the applicant was ineligible for U.S. citizenship under section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431, as amended by the Child Citizenship Act of 2000 (CCA), Pub. L. 106-395, 114 Stat. 1631 (Oct. 30, 2000). The director also found that the applicant was ineligible for U.S. citizenship under section 301 of the Act, 8 U.S.C. § 1401.

On appeal, the applicant, through counsel, maintains that the director erred in failing to consider her citizenship claim under former section 321 of the Act, 8 U.S.C. § 1432, as in effect at the relevant time. *See* Statement of Counsel on Form I-290B, Notice of Appeal to AAO. Counsel further maintains that the applicant fulfilled all the conditions for derivation of U.S. citizenship under former section 321 of the Act, including former section 321(a)(5), because she began residing permanently in the United States when she was admitted as a refugee. *See* Applicant's Appeal Brief at 4-6.

The applicable law for derivation of U.S. citizenship is "the law in effect at the time the critical events giving rise to eligibility occurred." *See Minasyan v. Gonzales*, 401 F.3d 1069, 1075 (9th Cir. 2005). The applicant in this case was born in 1967. The provisions of the CCA took effect on February 27, 2001, are not retroactive, and apply only to persons who were not yet 18 years old as of February 27, 2001. *See* CCA § 104. Because the applicant was over the age of 18 on February 27, 2001, she is not eligible for the benefits of the amended Act. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). Former section 321 of the Act, 8 U.S.C. § 1432 (2000), is therefore applicable to this case.

Former section 321 of the Act, 8 U.S.C. § 1432 (2000), 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.

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 applicant was paroled into the United States in 1975, but was not admitted as a lawful permanent resident until March 25, 2005, when she was 38 years old.

The record indicates that the applicant’s biological father is deceased, and that the applicant was adopted by her step-father, [REDACTED]. Former section 321(a) of the Act allows for derivative citizenship where both parents have naturalized, where the non-naturalizing parent is deceased, through the naturalization of the custodial parent where the parents are legally separated, or through the mother’s naturalization if the child is born out of wedlock (and paternity is not established). Even if the applicant could claim derivative citizenship through the naturalization of her mother alone as the surviving parent under former section 321(a)(2) of the Act, the applicant cannot establish that she was residing in the United States pursuant to a lawful admission for permanent residence as is required by former section 321(a)(5) of the Act.

The applicant, through counsel, maintains that she began to “reside permanently in the United States while under the age of 18.” See Applicant’s Appeal Brief at 4-6. In *Matter of Nwozuzu*, 24 I. & N. Dec. 609, 612-613 (BIA 2008), the Board of Immigration Appeals (the Board) acknowledged that it was reasonable to interpret the phrase “begins to reside permanently in the United States” as something other than obtaining lawful permanent resident status. Nevertheless, the Board unequivocally held that, under the agency’s interpretation of former section 321(a)(5) of the Act, admission as a lawful permanent resident prior to the applicant’s 18th birthday was required. The Board held that the agency’s interpretation was the most reasonable, and entitled to deference. According to the Board, to interpret the second clause of former section 321(a)(5) otherwise, “would effectively negate the lawful permanent residence requirement of the first clause.” The Board’s holding in *Nwozuzu* does not hinge on the immigration status, as opposed to parole, of an applicant. The opinion in *Nwozuzu* also clarifies that the subjective intent to reside permanently in the United States is insufficient to fulfill the requirement of section 321(a)(5) of the Act. See also *Ashton v. Gonzalez*, 431 F.3d 95 (2d Cir 2005).

Counsel notes that the applicant was paroled indefinitely into the United States, and not admitted as

a non-immigrant and cites *Minasyan, supra*, in support of her claim. The Ninth Circuit's *Minasyan* opinion is not controlling in this case, as it arises outside the Ninth Circuit. The *Minasyan* opinion is also not persuasive because it concerned the issue of legal separation of the parents, not the applicant's lawful permanent residence. As noted by counsel, the applicant in *Minasyan* indeed obtained lawful permanent residence prior to his eighteenth birthday. The applicant in this case did not obtain lawful permanent status prior to her eighteenth birthday, and therefore did not "begin to reside permanently in the United States while under the age of 18 years." She did not derive U.S. citizenship under former section 321(a) of the Act.

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

The applicant was not admitted as a lawful permanent resident until after her eighteenth birthday and therefore is statutorily ineligible to derive citizenship under former section 321 of the Act. The appeal will be dismissed.

ORDER: The appeal is dismissed.