

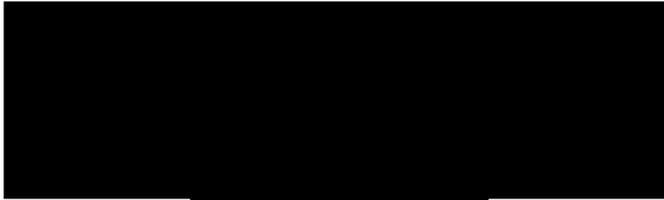
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

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**



E₂

FILE: [REDACTED] Office: TAMPA, FL 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.

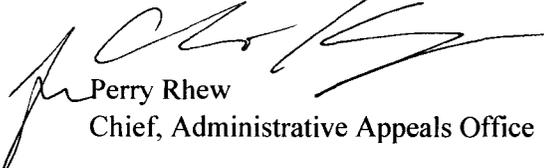
ON BEHALF OF APPLICANT:

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).


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Tampa, Florida. 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 2, 1971 in Peru. The applicant's father, [REDACTED], became a U.S. citizen upon his naturalization on July 14, 1986, when the applicant was 15 years old. The applicant's mother became a U.S. citizen in 1994 when the applicant was 23 years old. The applicant's parents were married in 1968, and divorced in 1992. The applicant was admitted to the United States as a lawful permanent resident on May 29, 1983, when he was 11 years old. The applicant presently seeks a Certificate of Citizenship pursuant to former section 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432 (repealed).

The district director determined that the applicant could not derive U.S. citizenship under former section 321 of the Act because his mother did not naturalize prior to his eighteenth birthday and he could not derive citizenship solely through his father. The application was accordingly denied.

On appeal, the applicant maintains that he has fulfilled the statute's guidelines and is eligible for U.S. citizenship. See Statement of Applicant on Form I-290B, Notice of Appeal to the AAO.

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 1971. The amendments to the derivative citizenship provisions of the Act enacted by the Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000)(CCA), took effect on February 27, 2001 but 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, he 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, stated, 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.

8 U.S.C. § 1432.

The record indicates that the applicant's father naturalized, and that the applicant was admitted to the United States as a lawful permanent resident, prior to the applicant's eighteenth birthday. Nevertheless, the applicant's mother became a U.S. citizen after the applicant's eighteenth birthday. The applicant's parents were married in 1968, and remained married until their divorce in 1993, after the applicant's eighteenth birthday.

The plain language of former section 321(a)(1) of the Act, 8 U.S.C. § 1432(a)(1), requires the naturalization of both parents prior to the applicant's eighteenth birthday where, as here, the applicant's parents were married.¹ Only the applicant's father naturalized prior to the applicant's 18th birthday. Therefore, the applicant did not derive U.S. citizenship under former section 321(a) of the Act.

"There 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). The regulation at 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 AAO finds that the applicant has not met his burden of proof, and his appeal will be dismissed.

ORDER: The appeal is dismissed.

¹ Former section 321(a)(3) of the Act, 8 U.S.C. § 1432(a)(3), is inapplicable to this case because the applicant's parents' divorce occurred after his eighteenth birthday. Derivation under former section 321 of the Act only occurs prior to the child's eighteenth birthday.