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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

[redacted]

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FILE: [redacted] Office: NEWARK, NJ Date: APR 28 2010

IN RE: [redacted]

APPLICATION: Application for Certificate of Citizenship under Former Section 321 of the Immigration and Nationality Act; 8 U.S.C. § 1432 (repealed).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, Newark, New Jersey. 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 July 14, 1974 in Ecuador. The applicant's parents, as indicated on his birth certificate, are [redacted] and [redacted] The applicant's parents were never married to each other. The applicant's mother became a U.S. citizen upon her naturalization on October 11, 1984, when the applicant was 10 years old. The applicant's father is not a U.S. citizen. The applicant was admitted to the United States as a lawful permanent resident on May 18, 1992, when he was 17 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of citizenship pursuant to former section 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432 (repealed).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 field office director determined that the applicant could not derive U.S. citizenship through his mother, because was legitimated under the law in Ecuador and therefore ineligible to derive U.S. citizenship solely through his mother under former section 321(a)(3) of the Act. The director also noted that the applicant was ineligible for benefits under the Child Citizenship Act of 2000 (the CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), because he was over the age of 18 on the CCA's effective date (February 27, 2001). The application was accordingly denied.

On appeal, the applicant, through counsel, requested an extension to time in which to file a brief and additional documents. The applicant maintains that his father never acknowledged him, and that he therefore derived U.S. citizenship upon his mother's naturalization. *See* Statement of the Applicant on Form I-290B, Notice of Appeal to the AAO. The applicant's request for an extension of time was granted, but to date, no additional evidence or brief has been received by the AAO.

The CCA, which took effect on February 27, 2001, amended sections 320 and 322 of the Act, and repealed section 321 of the Act. The provisions of the CCA are not retroactive, and the amended provisions of section 320 and 322 of the Act apply only to persons who were not yet 18 years old as of February 27, 2001. 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, is therefore applicable in 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 such 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 record shows that the applicant was born out of wedlock. Former section 321(a)(3) of the Act allows for derivation of U.S. citizenship by a child born out of wedlock only through a naturalizing mother when paternity has not been established by legitimation.

The AAO notes that the Civil Code of Ecuador, as reinstated on August 7, 1970, makes no distinction between legitimate and illegitimate children, and that under Ecuadorian law, "[a] child is 'legitimated' or 'recognized' by the acknowledgment of either or both parents . . . . [A]cknowledgment is permitted from the time of the child's conception." *Matter of Campuzano,* 18 I&N Dec. 390, 391 (BIA 1983).

The record contains an Ecuadorian birth certificate listing the applicant's father's name. The record also contains the registration of the applicant's birth, which was requested by his father on July 30, 1974. The birth certificate and registration establish that the applicant was acknowledged by his father at the time of his birth. Based on Ecuadorian law, as set forth in *Matter of Campuzano, supra,* the applicant was legitimated at birth. He therefore did not derive U.S. citizenship through the naturalization of his mother alone.

The Second Circuit has explained that a person in the applicant's position may only derive citizenship under former section 321(a) of the Act upon "the refusal of an unwed father to legally ***132** acknowledge his child coupled with the naturalization of the custodial mother." *Lewis v. Gonzales*, 481 F.3d 125, 131-32 (2nd Cir. 2007). In this case, the applicant's unwed father legally acknowledged him by registering both the applicant's birth and paternity. Accordingly, the applicant did not derive U.S. citizenship through his mother upon her naturalization.

The Supreme Court has explained that 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 applicant has not met his burden of proof, and his appeal will be dismissed.

ORDER: The appeal is dismissed.