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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:

[REDACTED]

Office:

[REDACTED]

Date: **AUG 24 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for Certificate of Citizenship under Former Section 321 of the Immigration and Nationality Act; 8 U.S.C. § 1432 (repealed).

ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you.

[REDACTED]

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 in the Dominican Republic. The applicant's parents, as indicated on his birth certificate, [REDACTED]. The applicant's parents were never married to each other. The applicant's mother became a U.S. citizen upon her naturalization on [REDACTED] when the [REDACTED]. The applicant was admitted to the United States as a lawful permanent resident on May 11, 1986. 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of citizenship pursuant to former section 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432 (repealed).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 under former section 321 of the Act because only he was legitimated by his father under the laws of the Dominican Republic and therefore could not derive U.S. citizenship upon his mother's naturalization. The director further noted that the applicant could not derive U.S. citizenship under the provisions of the Child Citizenship Act of 2000 (the CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), because he was over 18 on its effective date, February 27, 2001. The application was accordingly denied.

On appeal, the applicant, through counsel, maintains that his father's paternity has not been established such that he can derive U.S. citizenship upon her naturalization. See Applicant's Appeal Brief. The applicant states that there is no "definitive biological proof" of paternity in the record. *Id.* Further, he states that he was not "effectively legitimated" because he was never in his father's legal custody. *Id.*

The applicable law for derivative citizenship purposes is "the law in effect at the time the critical events giving rise to eligibility occurred." *Minasyan v. Gonzales*, 401 F.3d 1069, 1075 (9th Cir. 2005). 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 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 (1) of this subsection, or the parent 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 indicates that the applicant obtained lawful permanent residency [REDACTED] and that [REDACTED] the applicant's eighteenth birthday was in 1996. The record further indicates that the applicant was born out of wedlock, but that his parents were never married to each other. [REDACTED] The applicant consequently did not derive citizenship under subsections (1) or (2) of former section 321 of the Act. Former section 321(a)(3) of the Act allows for the derivation of U.S. citizenship by a child born out of wedlock only upon the naturalization of the mother where paternity of the child has not been established by legitimation. See *Lewis v. Gonzales*, 481 F.3d 125, 130 (2nd Cir. 2007).

Pursuant to *Matter of Martinez*, 21 I&N Dec. 1035 (BIA 1997) in order to qualify as a legitimated child, a child residing or domiciled in the Dominican Republic must have been under the age of 18 on January 1, 1995 (when the 1994 Code for the Protection of Children took effect). The Code eliminated all legal distinctions between children born in wedlock and those born out of wedlock.

[REDACTED] Dominican Republic is placed in the same legal position as one born in wedlock once the child has [REDACTED] The AAO notes that the applicant's birth was registered by his father, whose name appears as the declarant in his birth certificate. The AAO thus finds that the applicant was legitimated in accordance with the laws of the Dominican Republic.



The applicant did not derive U.S. citizenship under former section 321(a)(3) of the Act because, as noted above, his paternity was established by legitimation. The AAO thus concludes that the applicant did not derive U.S. citizenship under former section 321 of the Act or any other provision of law.

“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 burden of proof in citizenship cases is on the claimant to establish the claimed citizenship by a preponderance of the evidence. See Section 341 of the Act, 8 U.S.C. § 1452; 8 CFR § 341.2. The applicant has not met his burden of proof, and his appeal will be dismissed.

ORDER: The appeal is dismissed.

