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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: MIAMI, FL Date: AUG 2 4 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for Certificate of Citizenship under Former Section 321 of the Immigration and Nationality Act; 8 U.S.C. § 1432 (repealed).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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Miami, 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 September 22, 1978 in Peru. The applicant's parents are [redacted] and [redacted] The applicant's parents were married to each other on October 9, 1994. The applicant's mother became a U.S. citizen upon her naturalization on February 28, 1994, when the applicant was 15 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 in 1987. 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of citizenship pursuant to former section 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432 (repealed).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 his mother naturalized prior to his eighteenth birthday. 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 he automatically acquired U.S. citizenship upon his mother's naturalization. *See* Applicant's Appeal Brief. The applicant claims, *inter alia*, that he acquired U.S. citizenship on February 28, 1994 (the date of his mother's naturalization) because on that date he was an out of wedlock child, under 18 years old, residing as a lawful permanent resident in his mother's 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 in September 1987 and that his mother naturalized in February 1994. The record further indicates that the applicant was born out of wedlock, but that his parents were married in October 1994. The applicant's father was not deceased and is not a U.S. citizen. 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 Torres*, 22 I&N Dec. 28 (BIA 1998), children born out of wedlock in Peru, who were under 18 years of age on November 14, 1984, are considered legitimate under the Civil Code of Peru if they fulfilled the extramarital filiation requirements (recognition and ruling of paternity prior to their eighteenth birthday). Recognition under the Code can be recorded in the registry of births and may be done at the time the birth is registered. The applicant's father's name appears in the applicant's birth certificate. The AAO notes that the applicant's father appears as the declarant in the birth certificate. Thus, the AAO finds that the applicant was legitimated under the laws of Peru and therefore did not derive U.S. citizenship upon his mother's naturalization under former section 321(a)(3) 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 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.