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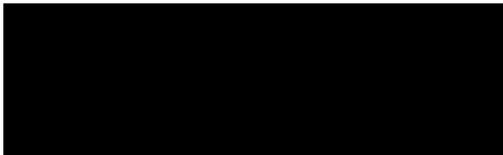
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

E₂



FILE:



Office: MIAMI, FL

Date:

AUG 25 2010

IN RE:

Applicant:



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for Certificate of Citizenship under Former Section 321 of the Immigration and Nationality Act; 8 U.S.C. § 1432 (repealed).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

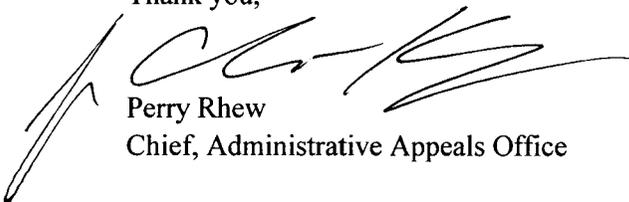


INSTRUCTIONS:

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

of the state which is...
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DISCUSSION: The application was denied by the Field Office Director, Miami, Florida. The matter is now before the Administrative Appeals Office (AAO) on appeal.¹ The appeal will be dismissed.

The record reflects that the applicant was born on April 19, 1967 in Jamaica. The applicant was adopted by [REDACTED] in 1980. The applicant's adopted mother is a U.S. citizen. The applicant seeks a certificate of citizenship claiming that she derived U.S. citizenship through her mother.

The field office director determined that the applicant could not derive U.S. citizenship under former section 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432 (repealed), because she had failed to establish that her adoptive parents were U.S. citizens or that she was lawfully admitted for permanent residence. The application was accordingly denied.

On appeal, the applicant submits a copy of her adopted mother's U.S. passport and social security card. The applicant, through counsel, maintains that she derived U.S. citizenship through her mother pursuant to former section 321 of the Act. See Statement of the Applicant on the Form I-290B, Notice of Appeal to the AAO.

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 Child Citizenship Act of 2000 (the CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), 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, the provisions of the CCA are not applicable to her case. 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

¹ The AAO notes that there is a Notice of Certification in the record, issued by the Oakland Park Field Office Director on April 29, 2010. The issuance of a Notice of Certification is not required to forward an appeal to the AAO. The appeal, which was timely filed on September 30, 2009, is properly before the AAO.



(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.

(b) Subsection (a) of this section shall apply to an adopted child only if the child is residing in the United States at the time of naturalization of such adoptive parent or parents, in the custody of his adoptive parent or parents, pursuant to a lawful admission for permanent residence.

The record shows that the applicant's adopted mother is a U.S. citizen, and that she naturalized in 1979. However, at the time of her adoptive mother's naturalization, the applicant was not residing in the United States pursuant to a lawful admission for permanent residence, as is required by former section 321(a)(5) and 321(b) of the Act. *See Smart v. Ashcroft*, 401 F.3d 119, 123 (2nd Cir. 1005). The applicant therefore did not derive U.S. citizenship through her adopted mother pursuant to former section 321 or any other provision 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 her burden of proof, and her appeal will be dismissed.

ORDER: The appeal is dismissed.

