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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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FILE:

Office: ST. CROIX, USVI

Date: **AUG 31 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for Certificate of Citizenship under Former Section 321 of the Immigration and Nationality Act; 8 U.S.C. § 1432 (repealed).

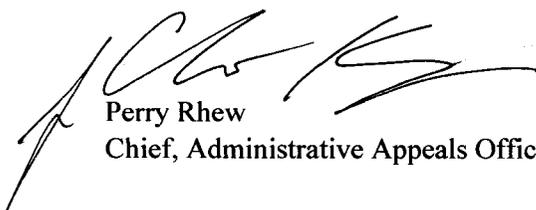
ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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.

Thank you,

  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The application was denied by the Field Office Director, Saint Croix, U.S. Virgin Islands. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant was born on February 21, 1958 in Antigua. The applicant's parents are [REDACTED]. The applicant's parents were married in 1953 and divorced in 1966 in Antigua. The applicant's father became a U.S. citizen upon his naturalization on July 13, 1972, when the applicant was 15 years old. The applicant was admitted to the United States as a lawful permanent resident in 1973. She currently seeks a certificate of citizenship claiming that she derived U.S. citizenship through her father.

The field office director denied the application upon finding that the applicant had failed to submit evidence which had been requested. On appeal, the applicant states that she had submitted the required evidence to the extent that it was available to her. *See* Statement of the Applicant on Form I-290B, Notice of Appeal to the AAO. The applicant maintains that she derived U.S. citizenship upon her father's naturalization. *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 (9<sup>th</sup> 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. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). The applicant's eighteenth birthday was on February 21, 1976. Because the applicant was over the age of 18 on February 27, 2001, former section 321 of the Act, 8 U.S.C. § 1432 (1958) is applicable in her 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 1973 and that her father naturalized in 1972. The applicant's eighteenth birthday was on February 21, 1976. The applicant has thus established that her U.S. citizen father naturalized and that she was admitted to the United States as a lawful permanent resident prior to her eighteenth birthday. The applicant's mother was not a U.S. citizen. The applicant's parents were married in 1953 and divorced in 1966. Former section 321(a)(3) of the Act is therefore applicable in this case. At issue is whether the applicant's father had legal custody of the applicant following his 1966 divorce.

Legal custody vests by virtue of "either a natural right or a court decree". See *Matter of Harris*, 15 I&N Dec. 39, 41 (BIA 1970). The applicant's parents' divorce document does not address the issue of the applicant's custody. In the absence of a judicial determination or grant of custody in a case of a legal separation of the naturalized parent, the parent having actual, uncontested custody of the child is to be regarded as having "legal custody." See *Matter of M*, 3 I&N Dec. 850, 856 (BIA 1950). The record indicates that the applicant immigrated to the United States to reside with her father. The Board of Immigration Appeals (Board) has held that "[u]nless there is evidence to show that the father of a legitimated child has been deprived of his natural right to custody, he will be presumed to share custody with the mother." *Matter of Rivers*, 17 I&N Dec. 419, 422-23 (BIA 1980) (stating the presumption "that the father has not been divested of his natural right to equal custody in the absence of affirmative evidence indicating otherwise."). Here, there is no evidence that the applicant's father was deprived of his custody of the applicant after she immigrated to the United States. The AAO therefore finds that the applicant's father had actual, uncontested custody of the applicant following the applicant's parents' divorce. The applicant therefore has fulfilled the conditions for derivative citizenship required in former section 321(a)(3) of the Act.

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 met her burden of proof, and her appeal will be sustained. The matter will be returned to the St. Croix Field Office for issuance of a certificate of citizenship.

**ORDER:** The appeal is sustained. The matter is returned to the Saint Croix Field Office for issuance of a certificate of citizenship.