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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: [Redacted]

Office: HARTFORD, CT

DEC 06 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for Certificate of Citizenship under Former Section 321 of the Immigration and Nationality Act; 8 U.S.C. § 1432 (repealed).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:

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.

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 \$630. 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 Director, Hartford, Connecticut, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on March 2, 1959 in Honduras. The applicant's parents are [REDACTED] They were married on December 9, 1953 and divorced on June 1, 1988. The applicant was admitted to the United States as a lawful permanent resident on June 12, 1969, when he was 10 years old. The applicant's mother became a U.S. citizen on September 16, 1976, when the applicant was 17 years old. The applicant's father became a U.S. citizen on October 18, 1979, when the applicant was 20 years old. The applicant seeks a certificate of citizenship claiming that he derived U.S. citizenship through his mother.

The director denied the applicant's citizenship claim upon finding that the applicant did not derive U.S. citizenship because he could not establish that both his parents naturalized prior to his eighteenth birthday as is required by former section 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432 (repealed) or that he could benefit from the amended provisions of section 320 of the Act, 8 U.S.C. § 1431, because he was over the age of 18 when they went into effect.

On appeal, the applicant states that it "is totally heartbreaking" to be denied U.S. citizenship. See Statement of the Applicant accompanying Form I-290B, Notice of Appeal to the AAO.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The applicant has not established his eligibility for citizenship and the appeal will be dismissed for the reasons discussed below.

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, 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 1969 and that his mother naturalized in 1976. The applicant's parents were married in 1953, and divorced in 1988. The applicant's eighteenth birthday was in 1977. His father naturalized in 1979, when the applicant was 20 years old.

Former section 321(a) of the Act requires the naturalization of both parents prior to the applicant's eighteenth birthday, unless one parent is deceased, the applicant's parents are legally separated (prior to the applicant's eighteenth birthday) or the applicant is born out of wedlock. The applicant does not fit within any of these exceptions to the requirement to establish that both parents were naturalized prior to his eighteenth birthday. Therefore, the applicant cannot establish that he derived U.S. citizenship under former section 321(a) 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 failed to meet his burden of proof, and his appeal will be dismissed.

ORDER: The appeal is dismissed.