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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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*Er*

[REDACTED]

FILE:

[REDACTED]

Office: HOUSTON, TX

Date:

**FEB 17 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. § 1431(2000).

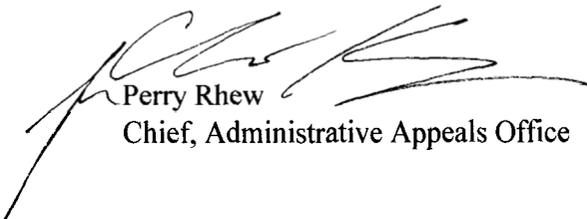
ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The application was denied by the Field Office Director, Houston, Texas, 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 January 1, 1983 in Aruba. The applicant was adopted, in Texas, by [REDACTED] and [REDACTED] on October 27, 1986. The applicant's adoptive mother became a U.S. citizen upon her naturalization on February 27, 1987, when the applicant was four years old. The applicant's adoptive father became a U.S. citizen upon his naturalization on April 29, 1988, when the applicant was five years old. The applicant was admitted to the United States as a lawful permanent resident on December 31, 1992, when she was nine years old. The applicant seeks a certificate of citizenship pursuant to former section 321 of the Immigration and Nationality Act (INA or "the Act"), 8 U.S.C. § 1432.

The field office director determined that the applicant did not derive U.S. citizenship through her adoptive parents because she was not a lawful permanent resident, residing in the United States in her adoptive parents' custody, at the time of their naturalization. The application was accordingly denied.

On appeal, the applicant maintains that she is not required to establish that she was a lawful permanent resident at the time of her parents' naturalization. *See* Statement of the Applicant on Form I-290B, Notice of Appeal to the AAO.

The Child Citizenship Act (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 18 years old on February 27, 2001, she is not eligible for the benefits of the amended Act. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). Section 321 of the former Act, 8 U.S.C. § 1432 (repealed), is therefore applicable in this case.

Section 321 of the former 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 (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 parents, pursuant to a lawful admission for permanent residence.

8 U.S.C. § 1431.

The plain language of section 321(b) of the former Act requires that the applicant establish that she was residing in the United States as a lawful permanent resident, and in her adoptive parents' custody, at the time of their naturalization. *See Smart v. Ashcroft*, 401 F.3d 119 (2d Cir. 2005)(finding no equal protection violation in the section 321(b) requirement that adoptive children, unlike biological children, reside with their parents at time of parents' naturalization in order derive U.S. citizenship). The applicant was admitted to the United States as a lawful permanent resident (in 1992) after her adoptive parents' naturalization (in 1988 and 1987). Therefore, she did not derive U.S. citizenship pursuant to section 321 of the former Act, 8 U.S.C. § 1432 (repealed).

The AAO notes “[t]here 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). As previously noted, the regulation at 8 C.F.R. § 341.2 provides that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. In order to meet this burden, the applicant must submit relevant, probative and credible evidence to establish that the claim is “probably true” or “more likely than not.” *See Matter of E-M-*, 20 I&N Dec. 77 (Comm. 1989). The applicant is statutorily ineligible for U.S. citizenship under section 321 of the former Act. She therefore cannot meet her burden of proof in this proceeding and her appeal will be dismissed.

**ORDER:** The appeal is dismissed.