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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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Services

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FILE: [REDACTED] Office: PHILADELPHIA, PA Date:

FEB 18 2010

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under Section 321 of the former Immigration and Nationality Act; 8 U.S.C. § 1432 (2000).

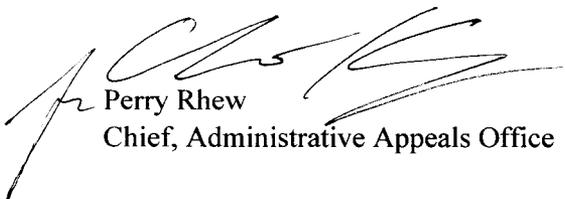
ON BEHALF OF APPLICANT:



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, Philadelphia, Pennsylvania, 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 December 4, 1976 in the Soviet Union. The applicant's parents, [REDACTED] and [REDACTED] became U.S. citizens upon their naturalization on October 7, 1986 and January 28, 1994, respectively. The applicant was paroled into the United States on September 25, 1978. He seeks a certificate of citizenship claiming that he derived U.S. citizenship section 321 of the former Immigration and Nationality Act (the Act), 8 U.S.C. § 1432 (2000).

The field office director denied the applicant's citizenship claim finding that he had not been admitted as a lawful permanent resident prior to his 18th birthday, and was therefore ineligible for U.S. citizenship under section 321 of the former Act.

On appeal, the applicant, through counsel, maintains that the director erred in finding that he was not residing permanently in the United States in light of his admission as a refugee in 1978. See Applicant's Appeal Brief.

The applicable law for transmitting citizenship to a child born abroad when one parent is a U.S. citizen is the statute that was in effect at the time of the child's birth. See *Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1029 (9th Cir. 2000) (citations omitted). The applicant was born in 1976. He was over 18 years old when the Child Citizenship Act of 2000 (CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), went into effect on February 27, 2001. See CCA § 104; *Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001) (holding that the CCA applies only to persons who were not yet 18 years old as of February 27, 2001). Section 321 of the former Act, 8 U.S.C. § 1432 (2000), is therefore applicable to this case.

Section 321 of the former Act, 8 U.S.C. § 1432 (2000), provided, 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.

Section 101(a)(20) of the Act, 8 U.S.C. § 1101(a)(20), defines the term, “lawfully admitted for permanent residence” as “[t]he status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed.” There is no evidence in the record establishing that the applicant was admitted for lawful permanent residence. The applicant was paroled into the United States in 1978, and may have been eligible for adjustment of status to lawful permanent residence. The record does not contain any evidence that the applicant’s status was adjusted to that of lawful permanent resident.

The record also does not suggest that the applicant began “to reside permanently in the United States while under the age of 18 years,” as further required by former section 321(a)(5) of the Act. In this regard, the AAO notes that “subjective intent alone is insufficient to satisfy [former section] 321(a) of the Act,” but there must be “some objective official manifestation of the child’s permanent residence.” *See Ashton v. Gonzales*, 431 F.3d 95, 98-99 (2nd Cir. 2005). In *Matter of Nwozuzu*, 24 I. & N. Dec. 609, 612-613 (BIA 2008), the Board of Immigration Appeals found that “the phrase ‘begins to reside permanently in the United States while under the age of eighteen years’ is most reasonably interpreted to mean that an alien must obtain the status of lawful permanent resident while under the age of 18 years to acquire derivative citizenship.” The applicant did not obtain lawful permanent status prior to his 18th birthday, and therefore did not derive U.S. citizenship under section 321(a) of the former Act.

It is well established that the requirements for citizenship, as set forth in the Act, are statutorily mandated by Congress, and USCIS lacks statutory authority to issue a Certificate of Citizenship when an applicant fails to meet the relevant statutory provisions set forth in the Act. A person may only obtain citizenship in strict compliance with the statutory requirements imposed by Congress. *INS v. Pangilinan*, 486 U.S. 875, 885 (1988). Even courts may not use their equitable powers to grant citizenship, and any doubts concerning citizenship are to be resolved in favor of the United States. *Id.* at 883-84; *see also United States v. Manzi*, 276 U.S. 463, 467 (1928) (stating that “citizenship is a high privilege, and when doubts exist concerning a grant of it ... they should be resolved in favor of the United States and against the claimant”). Moreover, “it has been universally accepted that the burden is on the alien applicant to show his eligibility for citizenship in every respect.” *Berenyi v. District Director, INS*, 385 U.S. 630, 637 (1967).

8 C.F.R. § 341.2(c) 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.” *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). The applicant did not obtain lawful permanent status prior to his 18th birthday. He is therefore statutorily ineligible to derive U.S. citizenship and his appeal will be dismissed.

ORDER: The appeal is dismissed.