

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

PUBLIC COPY

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



U.S. Citizenship
and Immigration
Services

E2



FILE: [REDACTED] Office: NEW ORLEANS, LA Date: **FEB 25 2010**

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under Section 301(a)(7) of the former Immigration and Nationality Act; 8 U.S.C. § 1401(a)(7)(1952).

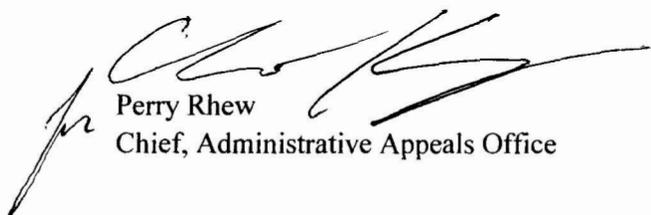
ON BEHALF OF APPLICANT:



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, New Orleans, Louisiana, 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 10, 1952 in Panama. The applicant's mother, [REDACTED] became a U.S. citizen upon her naturalization in 1980. The applicant's mother married [REDACTED] in 1959. [REDACTED], a native-born U.S. citizen, adopted the applicant in 1961. The applicant claims that he acquired U.S. citizenship at birth through his adopted father.

The field office director considered the applicant's claim under section 321 of the former Immigration and Nationality Act (the Act), 8 U.S.C. § 1432 (repealed). The director noted that the applicant was over the age of 18 when section 321 of the former Act was made applicable to adopted children (in 1978). The director further noted that the applicant only had one U.S. citizen parent at the time, and was not present in the United States as required. The application was accordingly denied.

On appeal, the applicant, through counsel, states that his citizenship claim arises under section 301(g) of the Act, 8 U.S.C. § 1401(g). *See* Statement of the Applicant on Form I-290B, Notice of Appeal to the AAO. The AAO notes that the appeal was not accompanied by any additional evidence or brief, nor was any such evidence or brief received by the AAO within 30 days as noted in the Form I-290B.

"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" *Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1029 (9th Cir. 2000) (citations omitted). The applicant was born on 1952. Section 301(g) of the Act, 8 U.S.C. § 1401(g), is therefore not applicable to this case.¹ Rather, the AAO will consider the applicant's claim under section 301(a)(7) of the former Act, 8 U.S.C. § 1401(a)(7) (1952).

Section 301(a)(7) of the former Act, 8 U.S.C. § 1401(a)(7), provided that the following shall be nationals and citizens of the United States at birth:

[A] person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years: *Provided*, That any periods of honorable service in the Armed Forces of the United States by such citizen parent may be included in computing the physical presence requirements of this paragraph.

¹ Section 301(a)(7) of the former Act was re-designated as section 301(g) by the Act of October 10, 1978, Pub. L. 95-432, 92 Stat. 1046. The requirements of section 301(a)(7) remained the same after the re-designation and until 1986.

At the outset, the AAO notes that the applicant must establish that he was born to a U.S. citizen parent. Because the applicant's mother was not a U.S. citizen at the time of the applicant's birth, he did not acquire U.S. citizenship at birth. The applicant also did not acquire U.S. citizenship at birth through his adopted father. Under the law in effect at the time of the applicant's birth, acquisition of U.S. citizenship at birth required a biological parent/child relationship.

The AAO further notes that the applicant did not derive U.S. citizenship upon his mother's naturalization in 1980 or through his adoptive father under section 321 of the former Act, 8 U.S.C. § 1432 (repealed).² First, the AAO notes that there is no evidence that the applicant was lawfully admitted for permanent residence as required by section 321 of the former Act. Moreover, the applicant was over 18 when his mother naturalized, and when section 321 of the former Act became applicable to adopted children. Additionally, the applicant's adoptive father was a native-born U.S. citizen, and section 321 of the former Act provides for derivation of U.S. citizenship only upon the naturalization of a parent. Therefore, the applicant did not derive U.S. citizenship under section 321 of the former Act or any other provision of the Act.

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). According to the U.S. Supreme Court "it has been universally accepted that the burden is on the alien applicant to show his eligibility for citizenship in every respect. This Court has often stated that doubts 'should be resolved in favor of the United States and against the claimant.'" *Berenyi v. District Director*, 385 U.S. 630, 671 (1967).

The regulation at 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 in the present case has failed to meet his burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.

² The Child Citizenship Act of 2000 (CCA) amended sections 320 and 322 of the Act, 8 U.S.C. §§ 1431 and 1433, and repealed section 321 of the Act, 8 U.S.C. § 1432. The CCA took effect on February 27, 2001, and benefits all persons who had not yet reached their 18th birthdays as of February 27, 2001. See *Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). Because the applicant was over 18 years of age on February 27, 2001, he does not meet the age requirement for benefits under the CCA.