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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: NEW YORK CITY, NEW YORK

Date: **JAN 29 2010**

IN RE:



APPLICATION: Application for Certificate of Citizenship under former section 321 of the Immigration and Nationality Act, 8 U.S.C. § 1432

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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, as required by 8 C.F.R. 103.5(a)(1)(i).



Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Application for Certificate of Citizenship (Form N-600) was denied by the District Director, New York City, New York. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born in Italy on November 13, 1944. *See Birth Certificate.* The applicant was admitted to the United States as a lawful permanent resident on October 11, 1957. *See Immigrant Visa and Alien Registration.* The applicant seeks a certificate of citizenship under former section 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432.

The director determined that the applicant did not derive citizenship under former section 321 of the Act because his parents had not naturalized before his 18th birthday. *See Decision of the Director*, dated Apr. 14, 2008. The application was denied accordingly. On appeal, the applicant contends that his citizenship was denied because of fraud. *See Form I-290B, Notice of Appeal*, filed May 13, 2008.

The AAO reviews these proceedings de novo. *See* 5 U.S.C. 557(b) (“On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.”).

Because the applicant was born abroad, he is presumed to be an alien and bears the burden of establishing his claim to U.S. citizenship by a preponderance of credible evidence. *See Matter of Baires-Larios*, 24 I&N Dec. 467, 468 (BIA 2008). Former section 321(a) of the Act provided, in pertinent part:

A child born outside of the United States of alien parents . . . 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 . . . ; and if
- (4) Such naturalization takes place while such child is under the age of eighteen 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 thereafter begins to reside permanently in the United States while under the age of eighteen years.

Here, the record contains no evidence that either of the applicant's parents naturalized before his 18th birthday on November 13, 1962. In fact, the applicant previously stated that neither of his parents were U.S. citizens before he turned 18. The record contains two applications for naturalization dated July 5, 1963 and May 2, 1966 when the applicant was 18 and 21 years old respectively. On both forms, the applicant stated that neither his father nor his mother was ever a U.S. citizen. Accordingly, the applicant has not met his burden of showing that he meets the requirements of former section 321(a) of the Act.

The applicant contends that the former Immigration and Naturalization Service (INS) erred in denying his Application to File Petition for Naturalization (Form N-400) on February 28, 1975. *See Notice of Appeal; Memorandum in Support of Form N-600*, dated Oct. 18, 2007. Specifically, the applicant claims that the application was denied because of willful misrepresentation by an INS examiner. *Memorandum in Support of Form N-600, supra*. The jurisdiction of the AAO is limited to that authority specifically granted through the regulations at Volume 8 of the Code of Federal Regulations (8 C.F.R.) section 103.1(f)(3)(iii) (as in effect on Feb. 28, 2003) and subsequent amendments. Because the AAO has no jurisdiction over the denial of a Petition for Naturalization, *see* 8 C.F.R. § 103.1(f)(3)(iii)(2003), this contention will not be addressed.

A person may obtain citizenship only in strict compliance with the statutory requirements imposed by Congress. *INS v. Pangilinan*, 486 U.S. 875, 884 (1988). Moreover, "it has been universally accepted that the burden is on the alien applicant to show his eligibility for citizenship in every respect," and that any doubts concerning citizenship are to be resolved in favor of the United States. *Berenyi v. District Director, INS*, 385 U.S. 630, 637 (1967); *see also* 8 C.F.R. § 341.2(c) ("The burden of proof shall be upon the claimant . . . to establish the claimed citizenship by a preponderance of the evidence."). The applicant has not established his eligibility for citizenship under former section 321(a) of the Act and the appeal will be dismissed.

ORDER: The appeal is dismissed.