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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

PUBLIC COPY

E₂

FILE:

Office:

Date: JUL 13 2010

IN RE:

APPLICATION: Application for Certificate of Citizenship under former section 301 of the Immigration and Nationality Act; 8 U.S.C. § 1401 (1967)

ON BEHALF OF PETITIONER:

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 \$585. 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.



DISCUSSION: The application was denied by the Acting District Director, Newark, New Jersey, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born in the Dominican Republic on May 22, 1967, to [REDACTED] and [REDACTED]. The applicant's parents married on March 19, 1971. The applicant's father acquired U.S. citizenship upon his birth abroad to a U.S. citizen parent. The applicant's mother was born in the Dominican Republic and is not a U.S. citizen. The applicant was admitted to the United States as a lawful permanent resident on June 28, 1973. The applicant seeks a certificate of citizenship based on the claim that he acquired U.S. citizenship through his father.

The director determined that that applicant was not eligible for citizenship under section 320(a) of the Act, 8 U.S.C. § 1431, as amended by the Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631 (CCA), because the applicant was over the age of eighteen as of the February 27, 2001 effective date of the CCA. *See Decision of the Director*, dated Nov. 14, 2006. The director also determined that the applicant was not eligible for citizenship under any other provision of the Act, and denied the application accordingly. *Id.* On appeal, the applicant contends that he meets the requirements for derivative citizenship under former section 321 of the Act, 8 U.S.C. § 1432. *See Form I-290B, Notice of Appeal*, filed Dec. 12, 2006.¹

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). 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. INS*, 247 F.3d 1026, 1028 n.3 (9th Cir. 2001). The applicant in this case was born in 1967. Accordingly, former section 301(a)(7) of the Act, 8 U.S.C. § 1401(a)(7), controls his claim to acquired citizenship.²

Former section 301(a)(7) of the Act stated 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 . . . 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 . . . for a

¹ The applicant's Form I-290B and Brief on Appeal were prepared by an individual who has not established that he is an attorney or representative entitled to represent applicants before U.S. Citizenship and Immigration Services (USCIS) pursuant to the regulations at 8 C.F.R. §§ 103.2(a)(3) and 292.1(a). Accordingly, the AAO will treat the applicant as self represented, and will not communicate with the individual assisting the applicant.

² Former section 301(a)(7) of the Act was re-designated as section 301(g) by the Act of October 10, 1978, Pub. L. No. 95-432, 92 Stat. 1046 (1978). The requirements of former section 301(a)(7) remained the same after the re-designation and until 1986.



period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years. . .

Additionally, if the applicant was born out of wedlock, the applicant must satisfy the provisions set forth in former section 309(a) of the Act, 8 U.S.C. § 1409(a). Former section 309(a) of the Act provided that children born out of wedlock to U.S. citizen fathers must show that paternity was established by legitimation before the child turned 21. See former section 309(a) of the Act.³

Therefore, the applicant must establish that his father was physically present in the United States for no less than ten years before his birth on May 22, 1967, and that at least five of these years were after his father's fourteenth birthday on August 4, 1937. Additionally, because the applicant's parents were not married at the time of his birth, the applicant must establish that his paternity was established by legitimation before his 21st birthday on May 22, 1988.

Here, the applicant has established that his paternity was established by legitimation when his parents married on March 19, 1971. See *Marriage Certificate* (noting that the couple's children were legitimated); [REDACTED] issued on July 25, 2001 (stating that the applicant was legitimated by the marriage of his parents); *Matter of Doble-Pena*, 13 I&N Dec. 366, 367 (BIA 1969) (finding under former Dominican law that legitimation required marriage of the birth parents and acknowledgment).

However, the applicant has not shown that his father met the physical presence requirements set forth in former section 301(a)(7) of the Act. Specifically, the applicant stated that his father was physically present in the United States from January, 1969, until March, 1985. See *Form N-600*, filed Feb. 12, 2003.⁴ Because the applicant's father was not physically present in the United States for at least ten years before the applicant's birth in 1967, he did not acquire U.S. citizenship pursuant to former section 301(a)(7) of the Act.

Moreover, the director correctly concluded that the applicant did not qualify for citizenship under section 320 of the Act, as amended by the CCA. Because the applicant was over 18 years old on the February 27, 2001 effective date of the CCA, the amended section 320 of the Act is inapplicable to his case. See *Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001).

Finally, the applicant's claim on appeal that he qualifies for derivative citizenship under former section 321(a) of the Act lacks merit. Former section 321(a) of the Act provided, in pertinent part:

³ Former section 309(a) of the Act applies to persons who had attained 18 years of age on November 14, 1986, and to any individual with respect to whom paternity was established by legitimation before November 14, 1986, the date of enactment of the Immigration and Nationality Act Amendments of 1986, Pub. L. No. 99-653, 100 Stat. 3655 (1986). See Section 8(r) of the Immigration Technical Corrections Act of 1988, Pub. L. No. 100-525, 102 Stat. 2609 (1988).

⁴ The applicant's father's immigration record indicates that he first arrived in the United States on April 1, 1970. See *Form N-600* of [REDACTED] filed Nov. 3, 1971.



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 such child is unmarried and 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 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 eighteen years.

The statute explicitly requires, among other things, the naturalization of one or both parents. *Id.* Here, the applicant's father did not become a U.S. citizen by naturalization. Rather, he was a U.S. citizen at birth, based on his birth abroad to a U.S. citizen parent. *See Certificate of Citizenship for [REDACTED]* Because the applicant cannot show that either of his parents became U.S. citizens by naturalization, he did not derive citizenship after birth under former section 321(a) of the Act.

The applicant bears the burden of proof to establish the claimed citizenship by a preponderance of the evidence. Section 341 of the Act, 8 U.S.C. § 1452; 8 C.F.R. § 341.2(c). The applicant has failed to establish by a preponderance of the evidence that he meets the requirements for acquired or derived U.S. citizenship set forth in the Act. Accordingly, the applicant is not eligible for a certificate of citizenship, and the appeal will be dismissed.

ORDER: The appeal is dismissed.

