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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

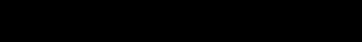
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FILE:  Office: DENVER, CO

Date: JUL 22 2010

IN RE: Applicant: 

APPLICATION: Application for Certificate of Citizenship under Former Sections 320, 321 and 322 of the Immigration and Nationality Act; 8 U.S.C. §§ 1431, 1432, 1433 (1991)

ON BEHALF OF APPLICANT:

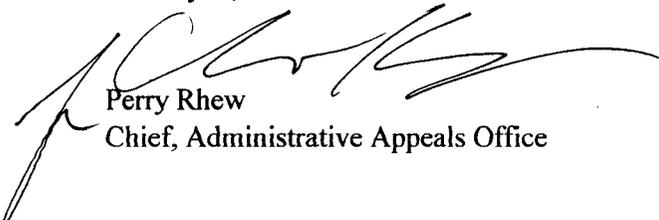


INSTRUCTIONS:

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.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Denver, Colorado. 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 on May 18, 1982 in Nigeria. The applicant claims that he was adopted by [REDACTED] in Nigeria in 1989. [REDACTED] became a U.S. citizen upon his naturalization on July 16, 1999. [REDACTED] derived U.S. citizenship on January 4, 1977. The applicant was admitted to the United States on August 14, 1991, as an orphan coming to the United States for adoption. The applicant presently seeks a certificate of citizenship claiming that he acquired U.S. citizenship through his adoptive mother.

The field office director determined that the applicant did not acquire U.S. citizenship because he was over the age of 18 and therefore ineligible for citizenship under sections 320 or 322 of the Act, 8 U.S.C. §§ 1431 and 1433. The application was accordingly denied.

On appeal, the applicant, through counsel, maintains that he acquired U.S. citizenship at birth through his mother under sections 301 of the Act, 8 U.S.C. § 1401. *See* Statement of the Applicant on Form I-290B, Notice of Appeal to the AAO. Alternatively, counsel states that the applicant should be granted U.S. citizenship under section 322 of the Act on equitable grounds, because he was not advised to apply prior to his eighteenth birthday. *Id.*

The applicable law for derivative citizenship purposes is “the law in effect at the time the critical events giving rise to eligibility occurred.” *See Minasyan v. Gonzales*, 401 F.3d 1069, 1075 (9th Cir. 2005). The applicant in this case was born in 1982. The applicant was over the age of 18 when the Child Citizenship Act of 2000 (the CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), went into effect (on February 27, 2001). Therefore, sections 320, 321 and 322 of the Act, as in effect prior to the CCA, are applicable to this case.

At the outset, the AAO notes that the applicant did not acquire U.S. citizenship pursuant to former section 301 of the Act, which provides for acquisition of U.S. citizenship at birth through a U.S. citizen parent, because he is not the biological child of a U.S. citizen.¹

¹ Former section 301, 8 U.S.C. § 1401 (1982) provides, in relevant part, 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

The applicant also did not acquire U.S. citizenship under former sections 320 or 321 of the Act, 8 U.S.C. §§ 1431 and 1432, as previously in force prior to February 27, 2001. Former sections 320 and 321 of the Act provided for acquisition of U.S. citizenship upon the naturalization of a parent and apply in certain circumstances to adopted children. There is no evidence in the record, however, that the applicant was adopted. The guardianship transfer document in the record, executed in Nigeria in 1989, is not a final adoption. The applicant was admitted to the United States as an orphan coming to the United States to be adopted, but the record does not contain a U.S. adoption decree. Therefore, the applicant cannot acquire or derive U.S. citizenship through an allegedly adoptive U.S. citizen parent's naturalization.

The applicant also fails to qualify for U.S. citizenship under section 322 of the former Act, 8 U.S.C. § 1433 (1991),² which required the application to be approved and the oath of allegiance administered prior to the child's eighteenth birthday. The applicant in this case was over 18 at the time he filed his application.

"There 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). The burden of proof is on the applicant to establish his claimed citizenship by a preponderance of the evidence. 8 C.F.R. § 341.2(c). The applicant has not met his burden of proof, and his appeal will be dismissed.

ORDER: The appeal is dismissed.

United States by such citizen parent may be included in computing the physical presence requirements of this paragraph.

² Former section 322 of the Act provided, in pertinent part, that:

(a) A parent who is a citizen of the United States may apply to the Attorney General [now the Secretary, Homeland Security, "Secretary"] for a certificate of citizenship on behalf of a child born outside the United States. The Attorney General [Secretary] shall issue such a certificate of citizenship upon proof to the satisfaction of the Attorney General [Secretary] that the following conditions have been fulfilled:

- (1) At least one parent is a citizen of the United States, whether by birth or naturalization.
- (2) The child is physically present in the United States pursuant to a lawful admission.
- (3) The child is under the age of 18 years and in the legal custody of the citizen parent.

....

(b) Upon approval of the application . . . [and] upon taking and subscribing before an officer of the Service within the United States to the oath of allegiance required by this chapter of an applicant for naturalization, the child shall become a citizen of the United States and shall be furnished by the Attorney General [Secretary] with a certificate of citizenship.