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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  
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Services

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[REDACTED]

FILE:

[REDACTED]

Office: ATLANTA, GEORGIA

Date: MAY 21 2010

IN RE:

[REDACTED]

APPLICATION:

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

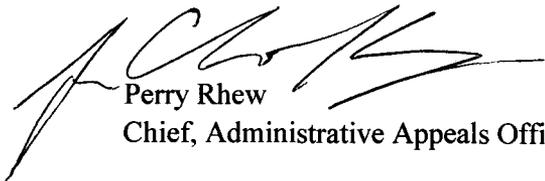
ON BEHALF OF PETITIONER:

[REDACTED]

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.

Thank you,

  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Application for Certificate of Citizenship (Form N-600) was denied by the Field Office Director, Atlanta, Georgia, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant was born in Antigua on September 25, 1968. The applicant's parents were married at the time of his birth. The applicant was admitted to the United States as a lawful permanent resident on April 17, 1971. The applicant's father became a naturalized U.S. citizen on March 24, 1975. The applicant's parents divorced on February 20, 1979, and remarried on December 7, 1999. The applicant's mother became a naturalized U.S. citizen on October 22, 1993. The applicant seeks a Certificate of Citizenship under former section 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432, claiming that he derived citizenship through his father.

The director determined that the applicant did not qualify for citizenship under former section 321 of the Act because he was over the age of 18 when his mother became a U.S. citizen. *See Decision of the Director*, dated Aug. 3, 2009. The application was denied accordingly. *Id.* On appeal, the applicant presents evidence of his parents' divorce and remarriage, and states through counsel that he inadvertently failed to indicate his parents' divorce and remarriage in his application. *See Form I-290B, Notice of Appeal*, filed Sep. 4, 2009. The applicant claims that he derived U.S. citizenship through his father at the time of his parents' divorce. *Id.* This contention has merit.

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering this decision on appeal.

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 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 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 order in which the requirements are fulfilled is irrelevant, as long as all requirements are satisfied before the applicant's 18th birthday. *Matter of Baires-Larios*, 24 I&N Dec. at 470.

Here, the applicant satisfied the requirements for derivative citizenship set forth in former section 321(a) of the Act before his eighteenth birthday. First, the applicant was admitted to the United States as a lawful permanent resident when he was two years old. Second, the applicant's father became a naturalized U.S. citizen when the applicant was six years old. Third, the applicant's parents divorced in 1979, when the applicant was 11 years old, and the divorce decree places the applicant in his father's custody.

The applicant bears the burden of proof to establish his eligibility for citizenship under the Act. 8 C.F.R. § 341.2(c). Here, the applicant has established by a preponderance of the evidence that he met all of the conditions for the automatic derivation of U.S. citizenship pursuant to former section 321 of the Act prior to his eighteenth birthday. Accordingly, the appeal will be sustained, the decision of the director will be withdrawn, and the matter will be returned to the director for the issuance of a certificate of citizenship.

**ORDER:** The appeal is sustained. The matter is returned to the Atlanta Field Office for issuance of a certificate of citizenship.