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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: [REDACTED] Office: BALTIMORE, MD Date: NOV 18 2010

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under Former Section 321 of the
Immigration and Nationality Act, 8 U.S.C. § 1432 (repealed).

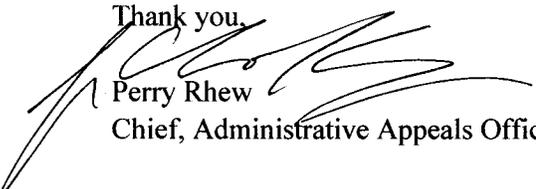
ON BEHALF OF APPLICANT:

[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.

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. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. 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 District Director, Baltimore, Maryland, 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 December 2, 1968 in Haiti. The applicant's parents are [REDACTED]. The applicant's parents were married in 1979. The applicant's mother became a U.S. citizen upon her naturalization in 1984, when the applicant was 15 years old. The applicant's father became a U.S. citizen upon his naturalization in 1997, when the applicant was over the age of 18 years. The applicant was admitted to the United States as a lawful permanent resident on November 21, 1981, when he was twelve years old. The applicant presently seeks a certificate of citizenship pursuant to former section 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432 (repealed).

The director initially denied the application, but then reopened and indicated approval of the application pending the applicant's personal appearance for further processing. The record does not indicate that the applicant appeared as requested. Hence, the director ultimately denied the application and did not issue a certificate of citizenship. The field office director determined that the applicant could not derive U.S. citizenship under former section 321(a) of the Act because he was over 18 years old at the time his father naturalized.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). On appeal, the applicant, through counsel, maintains that the district director's decision is "legally defective, null and void." See Applicant's Statement on Form I-190B, Notice of Appeal to the AAO. Counsel states that the applicant's claim was approved and that he has since acted in detrimental reliance of the approval. *Id.* Further, he states that the initial approval "should stand" because it was administratively final and because the oath ceremony is procedural only and not a substantive eligibility requirement. *Id.* Counsel indicates that a brief or additional evidence would be submitted to the AAO within 30 days. To date, after over seven months later, no additional evidence or brief has been received by this office.

The applicable law for derivative citizenship purposes is "the law in effect at the time the critical events giving rise to eligibility occurred." *Minasyan v. Gonzales*, 401 F.3d 1069, 1075 (9th Cir. 2005). The Child Citizenship Act of 2000 (the CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), which took effect on February 27, 2001, amended sections 320 and 322 of the Act, and repealed section 321 of the Act. The provisions of the CCA are not retroactive, and the amended provisions of section 320 and 322 of the Act apply only to persons who were not yet 18 years old as of February 27, 2001. Because the applicant was over the age of 18 on February 27, 2001, he is not eligible for the benefits of the amended Act. See *Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). Former section 321 of the Act is therefore applicable in this case.

Former section 321 of the Act, stated, in pertinent part, that:

(a) 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 said child is under the age of 18 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 18 years.

The record indicates that the applicant obtained lawful permanent residency in 1981 and that his mother naturalized in 1984. The applicant's father naturalized after the applicant's eighteenth birthday. The applicant's father is not deceased, therefore the applicant did not derive citizenship under subsections (1) or (2) of former section 321 of the Act which allow for derivation of U.S. citizenship upon the naturalization of both parents or of a surviving parent prior to the child's eighteenth birthday.

The applicant also did not derive citizenship under subsection (3) of former section 321 of the Act, which allows for the derivation of U.S. citizenship by a child born out of wedlock only upon the naturalization of the mother "where paternity of the child has not been established by legitimation." See *Lewis v. Gonzales*, 481 F.3d 125, 130 (2nd Cir. 2007). The applicant in this case was legitimated in 1979, when his parents married each other. See Applicant's parents' marriage certificate; see also *Matter of Richard*, 18 I&N Dec. 208 (BIA 1982) (relating to legitimation in Haiti); *Matter of Chambers*, 17 I&N Dec. 117 (BIA 1979) (relating to legitimation in the State of Maryland). He therefore did not derive U.S. citizenship under former section 321(a)(3) of the Act, or any other provision of law.

The applicant, through counsel, requests that his citizenship claim be granted because he detrimentally relied on an erroneous prior “approval” of his application. *See* Applicant’s Statement on Form I-190B, Notice of Appeal to the AAO. He maintains that a certificate of citizenship should be issued on a theory of administrative finality and because the required oath of allegiance is merely procedural.

Contrary to counsel’s claim, the oath of allegiance is a substantive statutory requirement for issuance of a certificate of citizenship and not merely procedural. Section 341 of the Act, 8 U.S.C. § 1452, specifically provides for the issuance of a certificate of citizenship only “upon taking and subscribing before [a USCIS officer] within the United States to the oath of allegiance required by this Act of an applicant for naturalization” The record in this case indicates that the applicant did not appear as requested for taking of the required oath of allegiance. There is no indication that his U.S. citizenship claim was granted, even after the application was mistakenly reopened and “approved.” Notably, counsel does not claim that the applicant fulfilled the statutory requirements of former section 321 of the Act or is otherwise statutorily eligible for U.S. citizenship.

The requirements for citizenship, as set forth in the Act, are statutorily mandated by Congress, and that USCIS lacks statutory authority to issue a certificate of citizenship when an applicant fails to meet the relevant statutory provisions set forth in the Act. A person may only obtain citizenship in strict compliance with the statutory requirements imposed by Congress. *INS v. Pangilinan*, 486 U.S. 875, 885 (1988). Even courts may not use their equitable powers to grant citizenship, and any doubts concerning citizenship are to be resolved in favor of the United States. *Id.* at 883-84. Moreover, “it has been universally accepted that the burden is on the alien applicant to show his eligibility for citizenship in every respect.” *Berenyi v. District Director, INS*, 385 U.S. 630, 637 (1967).

The applicant bears the burden of proof in these proceedings to establish the claimed citizenship by a preponderance of the evidence. *See* Section 341 of the Act, 8 U.S.C. § 1452; 8 CFR § 341.2. The applicant has failed to demonstrate his eligibility for citizenship under former section 321(a)(3) or any other provision of the Act. His appeal will therefore be dismissed.

ORDER: The appeal is dismissed.