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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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[REDACTED]

FILE: [REDACTED] Office: ATLANTA, GA

Date: **NOV 29 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for Certificate of Citizenship under Former Section 321 of the Immigration and Nationality Act; 8 U.S.C. § 1432 (repealed).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:

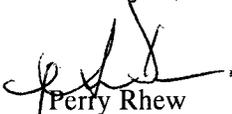
[REDACTED]

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, 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,


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Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Atlanta, Georgia, who certified the decision to the Administrative Appeals Office (AAO) for review. The director's decision will be affirmed. The application remains denied.

The record reflects that the applicant was born on October 19, 1973 in [REDACTED]. The applicant's mother, as indicated on the applicant's birth certificate, is [REDACTED]. The applicant's father's name is not listed. The applicant maternal grandmother became a U.S. citizen upon her naturalization on July 23, 1979. The applicant claims that he was adopted by his maternal grandmother. The applicant was admitted to the United States as a lawful permanent resident on March 21, 1985. He now seeks a certificate of citizenship claiming that he derived U.S. citizenship through his "adopted" mother.

The field office director determined that the applicant had failed to establish that he was adopted and therefore could not derive U.S. citizenship through his maternal grandmother under former section 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432 (repealed). The application was accordingly denied.

On appeal, the applicant, through counsel, maintains that the director erred in denying his citizenship claim because he was in his adopted mother's legal custody. *See* Appeal Brief. Counsel states that the applicant's grandmother petitioned for the applicant's immigrant visa and that the visa would not have been granted had he not been her adopted child. *See* Statement of the Applicant on the Form I-290B, Notice of Appeal to the AAO.

The AAO reviews these proceedings *de novo*. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). 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.

(b) Subsection (a) of this section shall apply to an adopted child only if the child is residing in the United States at the time of naturalization of such adoptive parent or parents, in the custody of his adoptive parent or parents, pursuant to a lawful admission for permanent residence.

The record indicates that the applicant obtained lawful permanent residency in 1985 and that his grandmother naturalized in 1979. There is not evidence in the record indicating that the applicant was adopted by his grandmother. The Judgment and Order entered in the U.S. Virgin Islands on April 26, 1985 grants the applicant's grandmother legal custody of the applicant, but is not an adoption decree. The applicant's immigrant visa petition was filed by his mother, not his grandmother as he claims. Therefore, the applicant could not derive U.S. citizenship through his grandmother.

"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 in citizenship cases is on the claimant 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 not met his burden of proof, and his appeal will be dismissed.

ORDER: The appeal is dismissed.