

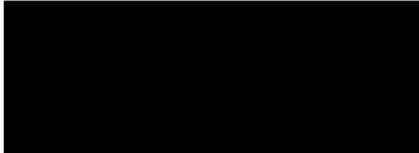
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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Services

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FILE:



Office: PORTLAND, OREGON

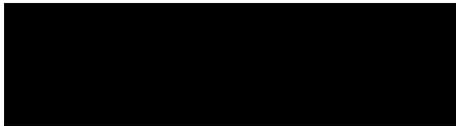
Date **NOV 29 2010**

IN RE:



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:



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 \$630. 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 for Certificate of Citizenship (Form N-600) was denied by the Acting Field Office Director, Portland, Oregon, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant seeks a certificate of citizenship under former section 321(a) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432(a) (1981), claiming that he derived citizenship through his mother.

The director, reviewing the case under section 320 of the Act, 8 U.S.C. § 1431, determined that the applicant failed to establish eligibility for derivative citizenship. The application was denied accordingly. On appeal, the applicant states that his attorney was not provided with a copy of the denial, and that the director's decision involved a "[p]ossible [m]isapplication of applicable law." See *Form I-290B Notice of Appeal*. On May 25, 2007, the director sent a copy of the decision to the applicant's attorney, and provided counsel with 30 days to submit a brief in support of the appeal. To date, over five months later, the AAO has not received a brief or additional evidence. As such, the AAO deems the record complete and ready for adjudication.

The applicable law for derivative citizenship purposes is that in effect at the time the critical events giving rise to eligibility occurred. *Minasyan v. Gonzales*, 401 F.3d 1069, 1075 (9th Cir. 2005); accord *Jordon v. Attorney General*, 424 F.3d 320, 328 (3d Cir. 2005). In this case, the director adjudicated the application under section 320 of the Act, 8 U.S.C. § 1431, as amended by the Child Citizenship Act of 2000 (CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000). However, the applicant was over 18 years old on the effective date of the CCA, and the amended section 320 of the Act is inapplicable to his case. See *Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). Former section 321 of the Act, in effect at the time of his mother's naturalization in 1981, is applicable in this case.

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 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.

Although the applicant was admitted to the United States as a lawful permanent resident when he was two years old, and the applicant's mother became a naturalized U.S. citizen when he was eight years old, he has not shown that he satisfied the requirements for derivative citizenship set forth in former section 321(a) of the Act before his eighteenth birthday. Specifically, because his father did not naturalize, he cannot derive citizenship under former section 321(a)(1) of the Act. The record does not indicate that the applicant's father was deceased prior to the applicant's eighteenth birthday and he is consequently ineligible to derive citizenship from his mother under former section 321(a)(2) of the Act. Because the applicant has not shown that his parents were legally separated while he was under the age of 18 years, he cannot establish eligibility under the first clause of former section 321(a)(3) of the Act. Finally, the applicant is ineligible to derive citizenship through his mother under the second clause of former section 321(a)(3) of the Act because he was born in wedlock and his paternity was established at birth.

The applicant bears the burden of proof to establish his eligibility for citizenship under the Act. Section 341 of the Act, 8 U.S.C. § 1452; 8 C.F.R. § 341.2(c). Here, the applicant has not established that he met all of the conditions for the automatic derivation of U.S. citizenship pursuant to former section 321 of the Act before his eighteenth birthday. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.