

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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



U.S. Citizenship and Immigration Services

PUBLIC COPY

[REDACTED]

E₂

OCT 01 2010

FILE: [REDACTED] Office: LOS ANGELES, CA Date:

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for Certificate of Citizenship under Former Section 321 of the Immigration and Nationality Act; 8 U.S.C. § 1432 (repealed).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

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Los Angeles, California and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant was born on December 18, 1978 in China. The applicant's parents, as indicated on her birth certificate, are [REDACTED] and [REDACTED]. The applicant was admitted to the United States as a lawful permanent resident on March 1, 1982, when she was three years old. The applicant's parents were married on December 8, 1976. The applicant claims that they were legally separated in October 1996. The applicant's mother became a U.S. citizen upon her naturalization on December 17, 1987, when the applicant was eight years old. The applicant now seeks a certificate of citizenship claiming that she derived U.S. citizenship upon her mother's naturalization pursuant to former section 321 of the Act, 8 U.S.C. § 1432 (repealed).

The field office director determined that the applicant did not derive U.S. citizenship upon her mother's naturalization because her parents were not "legally separated" prior to her eighteenth birthday. The director noted that the applicant's parents' marriage was dissolved in 1999. The application was accordingly denied.

The applicant, through counsel, maintains that her case is controlled by the Ninth Circuit Court of Appeals' decision in *Minasyan v. Gonzales*, 401 F.3d 1069 (9th Cir. 2005). She claims that, like in *Minasyan*, her parents' October 1996 "legal separation" was noted in their divorce judgment and therefore recognized by the State of California.

The applicable law for derivative citizenship purposes is "the law in effect at the time the critical events giving rise to eligibility occurred." *Minasyan*, 401 F.3d at 1075. 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. The applicant's eighteenth birthday was on December 18, 1996. Because the applicant was over the age of 18 on February 27, 2001, she 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, 8 U.S.C. § 1432, 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 AAO finds that the requirements set forth in former sections 321(a)(1) and 321(a)(2) of the Act have not been met because the applicant's father is not a U.S. citizen or deceased. At issue in this case is whether the applicant can derive U.S. citizenship under former section 321(a)(3) of the Act through her mother following her parents' "legal separation."

As this case arises within the jurisdiction of the Ninth Circuit Court of Appeals, the AAO is bound by the precedent decision in *Minasyan, supra*. In *Minasyan*, the Ninth Circuit explained that for immigration purposes, a "legal separation" means a separation recognized under the law of the state with jurisdiction over the parties. *Minasyan*, 401 F.3d at 1076. The court then determined that the recognition of the date of the parents' separation within the California court's dissolution of marriage judgment constituted a "legal separation" for purposes of derivative citizenship under former section 321(a)(3) of the Act. *Id.* at 1079. Like in *Minasyan*, the applicant's parent's dissolution of marriage order specifically states that they were separated in October 1996, before the applicant turned 18. The State of California therefore recognized October 1996 as the date of the applicant's parents' legal separation. The record further establishes that the applicant was in her mother's custody following her parents' separation, and she therefore derived U.S. citizenship through her mother under former section 321(a)(3) of the Act.

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 met her burden of proof, and her appeal will be sustained. The matter will be returned to the Los Angeles Field Office for issuance of the certificate of citizenship.

ORDER: The appeal is sustained. The matter is returned to the Los Angeles Field Office for issuance of the certificate of citizenship.