

identifying information to  
prevent creating 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**



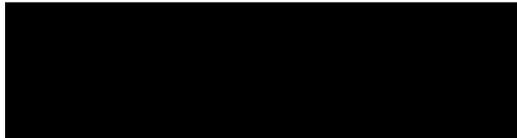
E<sub>2</sub>

FILE: [REDACTED] Office: JACKSONVILLE, FL Date: **OCT 08 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for Certificate of Citizenship under Former Section 321 of the Immigration and Nationality Act; 8 U.S.C. § 1432 (repealed).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:

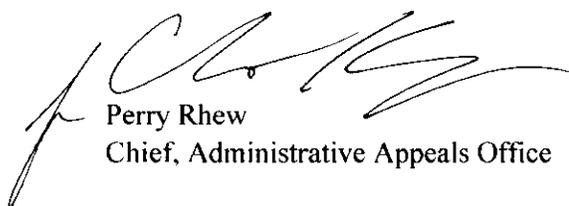


INSTRUCTIONS:

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 \$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 Field Office Director, Jacksonville, Florida 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 May 17, 1949 in Poland. The applicant was adopted in 1950 by [REDACTED] and [REDACTED]. The applicant was admitted to the United States as a lawful permanent resident on January 16, 1951. His adoptive parents became U.S. citizens upon their naturalization on April 11, 1956. The applicant now seeks a certificate of citizenship claiming that he derived U.S. citizenship upon his adoptive parents' naturalization.

The field office director determined that the applicant did not derive U.S. citizenship upon his adoptive parents' naturalization because the Immigration and Nationality Act (the Act) did not provide for derivative citizenship for adopted children prior to 1978. The application was accordingly denied.

Counsel maintains that the 1978 amendment to the Act allowing adopted children to derive U.S. citizenship applies retroactively. See Statement Accompanying Form I-290B, Notice of Appeal to the AAO. Counsel cites *Matter of Fuentes-Martinez*, 21 I&N Dec. 893 (BIA 1997), in support of her claim that the 1978 amendments to the Act apply retroactively to allow adoptive children to derive U.S. citizenship.

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 (9<sup>th</sup> 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. The applicant's eighteenth birthday was on May 17, 1967. 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, 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.

(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.

Subsection (b) of former section 321 of the Act, above, was added by the Act of October 5, 1978, Pub. L. No. 95-417, 92 Stat. 917. The Act of October 5, 1978 did not provide for retroactive application of subsection (b) such that children adopted prior to October 5, 1978 could derive U.S. citizenship from an adoptive parent. *See* INS Interpretation 320.1(d)(2) (finding that the amendment applies only prospectively to citizenship that vests after October 5, 1978). The applicant's reliance on *Matter of Fuentes-Martinez, supra*, is misplaced. At issue in *Fuentes-Martinez* was whether the applicant needed to be under the age of 16 when his or her biological parent naturalized, the question of eligibility for citizenship for adopted children was not implicated. Adopted children were not eligible to derive U.S. citizenship until October 5, 1978. Therefore the applicant was ineligible to derive U.S. citizenship upon his adoptive parents' naturalization.

"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.