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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: PHILADELPHIA, PA Date: OCT 25 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Immigration and Nationality Act, 8 U.S.C. § 1432 (repealed).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:

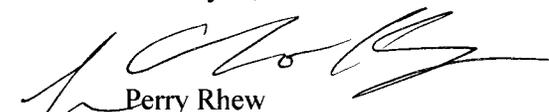
[REDACTED]

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 Field Office Director, Philadelphia, Pennsylvania, 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 April 16, 1984 in Guyana. The applicant's parents are [REDACTED]. The applicant's parents were never married to each other. The applicant's father became a U.S. citizen upon his naturalization on July 25, 1996, when the applicant was 12 years old. The applicant's mother is not a U.S. citizen. The applicant was admitted to the United States as a lawful permanent resident on June 2, 1991, when he was seven 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 field office director determined that the applicant could not derive U.S. citizenship under former section 321(a)(3) of the Act because he had failed to demonstrate that he was in his father's legal and physical custody. The director further noted that only the applicant's father was a U.S. citizen and that his parents were never legally married and separated or divorced. The application was accordingly denied.

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 he derived U.S. citizenship upon his father's naturalization because he was legitimated under the laws of Guyana. See Applicant's Appeal Brief. The applicant further claims that he was not in his mother's sole legal custody. *Id.*

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 1991 and that his father naturalized in 1996. The record does not indicate that the applicant's mother is deceased or that she became a U.S. citizen prior to the applicant's eighteenth birthday. The applicant consequently did not derive citizenship under subsections (1) or (2) of former section 321 of the Act. The applicant was born out of wedlock. Where both parents are living, former section 321(a)(3) of the Act allows for the derivation of U.S. citizenship by a child born out of wedlock only upon the naturalization of the mother. *See Lewis v. Gonzales*, 481 F.3d 125, 130 (2nd Cir. 2007). When both parents are alive, the statute does not provide for derivation of U.S. citizenship by a child born out of wedlock solely upon the father's naturalization, even if the child was legitimated.¹ The applicant therefore did not derive U.S. citizenship under former section 321 of the Act, or any other provision of law.

"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 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 not met his burden of proof, and his appeal will be dismissed.

ORDER: The appeal is dismissed.

¹ The legitimation laws of Guyana and the question of legal custody are therefore not at issue in this case.