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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

E₂

[REDACTED]

FILE: [REDACTED] Office: NEW YORK, NY Date: **SEP 27 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for Certificate of Citizenship under Former Section 321 of the Immigration and Nationality Act; 8 U.S.C. § 1432 (repealed).

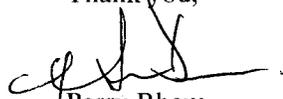
ON BEHALF OF APPLICANT:

[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.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, New York, New York. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant was born on [REDACTED] in Morocco. The applicant's parents are [REDACTED]. The applicant's parents were married in 1953, and divorced in 1957. The applicant's mother became a U.S. citizen upon her naturalization on December 12, 1962. The applicant was admitted to the United States as a lawful permanent resident on August 26, 1968. The applicant presently seeks a certificate of citizenship claiming that he acquired U.S. citizenship through his father pursuant to former section 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432 (repealed).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 did not derive U.S. citizenship because he had failed to establish that he was in his mother's legal custody. The director noted that the applicant's parents' divorce judgment awarded sole custody of the applicant to his father. The application was accordingly denied.

On appeal, the applicant submits, in relevant part, a copy of a rabbinical court decree ceding custody of the applicant to his mother. The applicant also submits a copy of a portion of the Foreign Affairs Manual, a letter from a local Rabbi, and a brief in support of his appeal. He, through counsel, maintains that he was in his mother's legal custody upon his admission to the United States. See Appeal Brief.

The applicable law for derivative citizenship purposes is "the law in effect at the time the critical events giving rise to eligibility occurred." See *Minasyan v. Gonzales*, 401 F.3d 1069, 1075 (9th Cir. 2005). Section 320 of the Act, as amended by the Child Citizenship Act of 2000 (the CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), provides for automatic acquisition of U.S. citizenship upon the fulfillment of certain conditions prior to a child's eighteenth birthday. The CCA, which took effect on February 27, 2001, is not retroactive, and applies 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, the CCA is not applicable to this case. See *Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). Former section 321 of the Act, 8 U.S.C. § 1432 (repealed), therefore applies to 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 establishes that the applicant's mother naturalized and that he was admitted to the United States as a lawful permanent resident prior to his eighteenth birthday. The question remains whether the applicant was residing in the legal custody of his U.S. citizen mother following his parents' divorce.

Legal custody vests by virtue of "either a natural right or a court decree." *See Matter of Harris*, 15 I&N Dec. 39, 41 (BIA 1970). Although the applicant's parents' original divorce judgment includes a grant of custody to the applicant's father, the record contains a Rabbinical Court document awarding custody of the applicant to his mother and step-father. The U.S. Department of State's Foreign Affairs Manual notes that Moroccan Jews who divorced prior to 1965 come within the jurisdiction of the Rabbinical Court. The AAO therefore finds that the applicant has established that he was in his mother's legal custody as required by former section 321(a)(3) of the Act.

"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 met his burden of proof, and his appeal will be sustained. The matter will be returned to the New York City Field Office for issuance of a certificate of citizenship.

ORDER: The appeal is sustained. The matter is returned to the New York City Office for issuance of a certificate of citizenship.