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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

**PUBLIC COPY**

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[REDACTED]

FILE:

[REDACTED]

Office: HOUSTON, TX

Date:

SEP 28 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for Certificate of Citizenship under Former Section 321 of the Immigration and Nationality Act; 8 U.S.C. § 1432 (repealed).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:

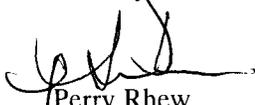
[REDACTED]

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, with a fee of \$585. 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, Houston, Texas. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on [REDACTED] in Mexico. The applicant's mother, [REDACTED], became a U.S. citizen upon her naturalization on June 18, 1999. The applicant's father, [REDACTED] is not a U.S. citizen. The applicant was admitted to the United States as a non-immigrant visitor in 1989. The applicant seeks a certificate of citizenship claiming that he derived U.S. citizenship through his mother.

The district director determined that the applicant did not derive U.S. citizenship under former section 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432 (repealed), because he was not admitted to the United States as a lawful permanent resident prior to his eighteenth birthday. The application was accordingly denied.

On appeal, the applicant, through counsel, maintains that the applicant began to reside permanently in the United States in 1989, upon his lawful entry on a visitor's visa. See Appeal Brief at 2. Counsel cites *Ashton v. Gonzalez*, 431 F.3d 95 (2<sup>nd</sup> Cir. 2005), in support of the applicant's claim that former section 321 of the Act does not require admission as a lawful permanent resident "as long as he actually resided in the U.S. before he was 18 years old . . . ." *Id.* at 3-4.

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 former section 321 of the Act. The amended provisions of section 320 and 322 of the Act apply to persons who were not yet 18 years old as of February 27, 2001. See *Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). The applicant's eighteenth birthday was on February 28, 2001, one day after the effective date of the CCA. Section 320 of the Act, 8 U.S.C. § 1431, as amended, is therefore applicable to his case.

Section 320 of the Act, as amended, states in pertinent part that:

- (a) A child born outside of the United States automatically becomes a citizen of the United States when all of the following conditions have been fulfilled:
  - (1) At least one parent of the child is a citizen of the United States, whether by birth or naturalization.
  - (2) The child is under the age of eighteen years.

- (3) The child is residing in the United States in the legal and physical custody of the citizen parent pursuant to a lawful admission for permanent residence.

The applicant must thus establish, inter alia, that he was residing as a lawful permanent resident in the United States in the legal and physical custody of his U.S. citizen mother prior to his eighteenth birthday. The applicant was never admitted to the United States as a lawful permanent resident. He therefore did not acquire U.S. citizenship under section 320 of the Act or any other provision of law.<sup>1</sup>

A person may only obtain citizenship in strict compliance with the statutory requirements imposed by Congress. *INS v. Pangilinan*, 486 U.S. 875, 885 (1988). 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 § 320.3(b). The applicant has not met his burden of proof, and his appeal will be dismissed.

**ORDER:** The appeal is dismissed.

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<sup>1</sup> As previously noted, former section 321 of the Act was repealed on February 27, 2001. Former section 321(a)(5) of the Act allowed for derivation of U.S. citizenship where the applicant has been admitted as a lawful permanent resident “or thereafter begins to reside permanently in the United States while under the age of 18 years.” 8 U.S.C. § 1432(a)(5)(2000). The applicant, through counsel, maintains that he began residing permanently in the United States in 1989. The AAO finds no merit in the applicant’s argument and no support for it in *Ashton v. Gonzalez*. Like the applicant in *Ashton*, the applicant here neither applied nor received lawful permanent resident status while under the age of 18 and, therefore, “cannot point to any . . . official objective manifestation” of lawful permanent residency. See *Ashton*, 431 F.3d at 99. More importantly, the claim is inapposite because former section 321 of the Act is not applicable to this case.