U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

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PUBLIC COPY

[redacted]

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Date: AUG 0 2 2011 Office: SAN JUAN, PR FILE: [redacted]

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for Certificate of Citizenship under Former Section 321 of the Immigration and Nationality Act; 8 U.S.C. § 1432 (repealed).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 $630. 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, San Juan, Puerto Rico. 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 March 4, 1976 in the Dominican Republic. The applicant's parents, as indicated on his birth certificate, are and Candida Camacho. The applicant's parents were married in 1975 and divorced in 1978 in the Dominican Republic. The applicant's father became a U.S. citizen upon his naturalization on November 5, 1990, when the applicant was 14 years old. The applicant was admitted to the United States as a lawful permanent resident on December 11, 1987, when he was 11 years old. His mother naturalized in 2008, when the applicant was over the age of 18 years. The applicant seeks a certificate of citizenship claiming that he derived 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 denied the applicant's citizenship claim upon finding that his father was not awarded legal custody following the applicant's parents' divorce. The director also considered the applicant's citizenship claim under sections 301, 309, 320 and 322 of the Act, 8 U.S.C. §§ 1401, 1409, 1431 and 1433. The director found the applicant ineligible for U.S. citizenship under these provisions. The application was accordingly denied.

On appeal, the applicant, through counsel, maintains that he derived U.S. citizenship pursuant to former section 321 of the Act, 8 U.S.C. § 1432 (repealed). *See* Appeal Brief. Counsel states that the applicant was in his father's "actual, uncontested custody" despite the award of custody to his mother upon his parents' divorce. *Id.* Counsel states that the custody award should not be given effect because it was entered as a default judgment against the applicant's mother. *Id.*

The AAO reviews these proceedings *de novo*. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). 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); *see also Matter of Rodriguez-Tejedor,* 23 I&N Dec. 153 (BIA 2001) (holding that the amendments to the Act enacted by the Child Citizenship Act of 2000 (the CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000) are not retroactive and apply only to persons who were not yet 18 years old as of February 27, 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 1987 and that his father naturalized in 1990. The applicant's eighteenth birthday was in 1994. The applicant has thus established that his U.S. citizen father naturalized and that he was admitted to the United States as a lawful permanent resident prior to his eighteenth birthday. At issue in this case is whether the applicant's father had legal custody of the applicant following his parent's 1978 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). The applicant's parents' divorce decree includes a grant of custody to the applicant's mother. The synopsis of divorce decree submitted by the applicant indicates that the divorce was obtained by "mutual consent." The divorce decree itself indicates that both parties were present and mutually petitioned for divorce. Thus, there is no factual basis for counsel's claim that the custody award to the applicant's mother is defective.[1]

Legal custody of the applicant was awarded to his mother upon the applicant's parents' divorce. The record contains no evidence that the 1978 custody award to the applicant's mother was amended or altered by the court. Therefore, the applicant cannot establish that he was in his father's legal custody as required by former section 321(a)(3) of the Act.

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[1] Counsel's reliance on *Bagot v. Ashcroft*, 398 F.3d 252, 266-67 (3d Cir. 2005), is misplaced because, *inter alia*, it was a case arising in the Third Circuit Court of Appeals and not in this jurisdiction.

"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 failed to meet his burden of proof, and his appeal will be dismissed.

ORDER: The appeal is dismissed.