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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

[redacted]

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Date: AUG 18 2011 Office: PHILADELPHIA, PA FILE: [redacted]

IN RE: [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for Certificate of Citizenship under former section 321 of the Immigration and Nationality Act, 8 U.S.C. § 1432 (repealed)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 PETITIONER:

[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 for Certificate of Citizenship (Form N-600) was denied by the Field Office Director, Philadelphia, Pennsylvania, and came before the Administrative Appeals Office (AAO) on appeal. The AAO remanded the matter to the director and the director issued a new decision. That decision is now before the AAO on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on July 29, 1965 in Panama. The applicant's parents are [redacted] The applicant's parents were married in 1965 and divorced in 1985. The applicant's father became a U.S. citizen upon his naturalization on September 12, 1984. The applicant's mother was naturalized on December 21, 1982. The applicant was admitted to the United States as a lawful permanent resident on August 24, 1977. The applicant's eighteenth birthday was on July 29, 1983. The applicant 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 denied the application upon finding that the applicant could not derive U.S. citizenship solely through his mother because his parents were not legally separated prior to his eighteenth birthday. On appeal, the applicant, citing *Minasyan v. Gonzalez,* 401 F.3d 1069 (9th Cir. 2005), claimed that his parents were separated on November 13, 1975 and that their separation was legally recognized under New York law. The AAO withdrew the director's decision and remanded the matter to the director to await U.S. Department of State Passport Office review and determination as to whether to revoke the applicant's passport. Upon receiving confirmation from the Passport Office that the applicant's U.S. passport had expired and therefore could not be revoked, the director issued a new decision finding, in relevant part, that the applicant had not established that his parents were legally separated. The director also noted that the applicant no longer held a valid, unexpired U.S. passport and therefore could not establish prima facie eligibility for U.S. citizenship on that basis.

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). As noted in the AAO's July 17, 2009 decision, former section 321 of the Act is applicable to this case. *See Minasyan v. Gonzales*, 401 F.3d 1069, 1075 (9th Cir. 2005); *accord Jordon v. Attorney General*, 424 F.3d 320, 328 (3d Cir. 2005).

Former section 321(a) of the Act provided, in pertinent part:

> A child born outside of the United States of alien parents . . . 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 such child is unmarried and under the age of eighteen 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 eighteen years.

At issue in this case is whether the applicant can establish that his parents were legally separated while he was under the age of 18 years, as required by section 321(a)(3) of the Act. The term legal separation means "either a limited or absolute divorce obtained through judicial proceedings." *Afeta v. Gonzales*, 467 F.3d 402, 406 (4th Cir. 2006) (affirming the Board of Immigration Appeals' construction of the term legal separation as set forth in *Matter of H*, 3 I&N Dec. 742, 744 (BIA 1949)) (internal quotation marks omitted). Legal separation "occurs only upon a formal governmental action, such as a decree issued by a court of competent jurisdiction that, under the laws of a state or nation having jurisdiction over the marriage, alters the marital relationship of the parties." *See Morgan v. Attorney General*, 432 F3d 226 (3d Cir. 2005); *see also Nehme v. INS*, 252 F.3d 415, 426 (5th Cir. 2001) (holding that "the term legal separation is uniformly understood to mean judicial separation").

The applicant submitted a New York Family Court petition for support and two child support orders, dated in 1978, and argued that these documents establish that his parents' separation was legally recognized as of 1975 by the state of New York. The applicant, through counsel, cites *Morgan, supra,* in support of his claim.

The Third Circuit decision in *Morgan* does not, as the applicant suggests, support his claim that the child support petition and orders legally recognize his parents' separation. The *Morgan* court considered whether the applicant's parents in that case obtained a judicial separation under Jamaican law and found that "[i]n the absence of such a judicial act, there was no 'legal separation' under Jamaican law." The *Morgan* court further found that Pennsylvania law required the entry of a divorce decree to alter a marital relationship. The applicant's parents in this case were divorced in 1985. The 1978 child support petition and orders do not amount to a recognition that the marital relationship between the applicant's parents had formally ended. Similar child support orders were at issue in *Brisset v. Ashcroft*, 363 F.3d 130 (2d Cir. 2004) and found not to have terminated the parties' marriage nor mandated or recognized their separate existence. Thus, the 1978 petition and orders are insufficient evidence of the applicant's parents' legal separation.

Having found that the applicant's parents were not legally separated prior to the applicant's eighteenth birthday as required by former section 321(a)(3) of the Act, the AAO concludes that the applicant did not automatically derive U.S. citizenship upon his mother's naturalization. The AAO

further concludes that the applicant's expired U.S. passport is not *prima facie* evidence of U.S. citizenship and need not be recognized as conclusive proof of U.S. citizenship. *See* 22 U.S.C. § 2705 (providing that a U.S. passport is proof of U.S. citizenship "during its period of validity").

The applicant bears the burden of proof to establish his eligibility for citizenship under the Act. Section 341 of the Act, 8 U.S.C. § 1452; 8 C.F.R. § 341.2(c). The applicant has not met his burden of proof in this case and his appeal will therefore be dismissed.

ORDER: The appeal is dismissed.