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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**



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DATE: **AUG 22 2011**

Office: DENVER, CO

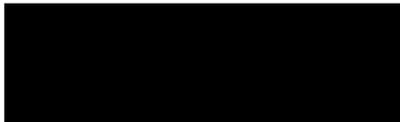
FILE: 

IN RE:

Applicant: 

APPLICATION: Application for Certificate of Citizenship under Section 322 of the Immigration and Nationality Act, 8 U.S.C. § 1433 (1999)

ON BEHALF OF APPLICANT:



**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, Denver, Colorado, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record indicates that the applicant was born on February 8, 1981 in Mexico. The applicant's parents were married in 1990. They became U.S. citizens upon their naturalization in 1997. The applicant was not admitted to the United States as a lawful permanent resident. The applicant seeks a certificate of citizenship claiming that he automatically derived U.S. citizenship upon his parents' naturalization.

The field office director denied the application upon finding, in relevant part, that the applicant was already 18 years of age. The director also noted that the applicant was not lawfully admitted to the United States. On appeal, the applicant, through counsel, maintains that his grant of "family unity" is a lawful admission under the Act. See Appeal Brief at 3-5. The applicant further claims that he was under the age of 18 when he automatically derived U.S. citizenship upon his parents' naturalization in 1997. *Id.* at 5-7.

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 (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 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. The applicant's eighteenth birthday was on February 8, 1999. 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 322 of the Act, 8 U.S.C. § 1433, as in effect before the enactment of the CCA, is therefore applicable to this case.

Former section 322 of the Act provided, in pertinent part, that:

(a) Application of citizen parents; requirements

A parent who is a citizen of the United States may apply to the Attorney General [now the Secretary, Homeland Security, "Secretary"] for a certificate of citizenship on behalf of a child born outside the United States. The Attorney General [Secretary] shall issue such a certificate of citizenship upon proof to the satisfaction of the Attorney General [Secretary] that the following conditions have been fulfilled:

- (1) At least one parent is a citizen of the United States, whether by birth or naturalization.
- (2) The child is physically present in the United States pursuant to a lawful admission.

(3) The child is under the age of 18 years and in the legal custody of the citizen parent.

....

(b) Attainment of citizenship status; receipt of certificate

Upon approval of the application . . . [and] upon taking and subscribing before an officer of the Service within the United States to the oath of allegiance required by this chapter of an applicant for naturalization, the child shall become a citizen of the United States and shall be furnished by the Attorney General [Secretary] with a certificate of citizenship.

....

The AAO notes that, whether or not an applicant satisfies the requirements set forth in former section 322(a) of the Act, including the “lawful admission” requirement in former section 322(a)(2) of the Act, he must also establish that his application for citizenship was approved, and that he took the oath of allegiance, prior to his 18<sup>th</sup> birthday. The applicant in the present case did not meet the requirements set forth in former section 322(b) of the former Act, because his application for a certificate of citizenship was not approved before his eighteenth birthday and because he did not take an oath of allegiance prior to his eighteenth birthday.

It is well established that the requirements for citizenship, as set forth in the Act, are statutorily mandated by Congress, and United States Citizenship and Immigration Services (USCIS) lacks statutory authority to issue a certificate of citizenship when an applicant fails to meet the relevant statutory provisions set forth in the Act. 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). Moreover, “it has been universally accepted that the burden is on the alien applicant to show his eligibility for citizenship in every respect.” *Berenyi v. District Director, INS*, 385 U.S. 630, 637 (1967).

“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 is not eligible for a certificate of citizenship under former section 322 of the Act, or any other provision of law. His appeal will therefore be dismissed.

**ORDER:** The appeal is dismissed.