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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**

E2

[Redacted]

FILE:

Office: ATLANTA, GA

Date: FEB 02 2011

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for Certificate of Citizenship under Former Section 321 of the Immigration and Nationality Act; 8 U.S.C. § 1432 (repealed).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

SELF-REPRESENTED

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 Acting Field Office Director, Atlanta, Georgia. 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 September 1, 1974 in Vietnam. The applicant's father, [REDACTED], became a U.S. citizen upon his naturalization on September [REDACTED]. The applicant was admitted to the United States as a refugee on [REDACTED] and later adjusted his immigration status to lawful permanent residence in 1984. The applicant's immigration records indicate that his mother is [REDACTED]. The applicant claims that his biological [REDACTED], that his biological parents were divorcéd and that his father was awarded his legal custody. The applicant seeks a certificate of citizenship claiming that he derived U.S. citizenship upon his father's naturalization.

The acting field office 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 both his parents were not naturalized prior to his eighteenth birthday. The application was accordingly denied.

On appeal, the applicant maintains that [REDACTED] is his step-mother. See Statement of the Applicant on the Form I-290B, Notice of Appeal to the AAO. He states that his father was married to [REDACTED] until 1978. *Id.* He states that "it was settled that [his] father would have full legal custody" upon the divorce. *Id.* Therefore, he claims that he derived U.S. citizenship upon his father's naturalization.

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). 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. 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 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's 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 can establish that his mother is [REDACTED] such that he could derive U.S. citizenship through his father under former section 321(a)(3) of the Act.

The AAO notes that the applicant's immigration record indicates that his mother is [REDACTED]. The acting field office director reviewed the applicant's parents' immigration records and noted that they indicated that [REDACTED] was the applicant's mother. *See also* Applicant's Presentence Investigation Report at 19. The applicant now submits affidavits executed by his father, family and friends stating that [REDACTED] is his biological mother. The record also includes a "Verification of Lost Divorce [sic] Certificate" which appears to be an affidavit executed by the applicant's father stating that he was divorced from [REDACTED] but that he was granted custody of the applicant.

The AAO finds that the applicant has failed to establish that his [REDACTED] is the applicant's mother or an explanation why [REDACTED] is listed as the applicant's mother in the applicant's immigration record and criminal documents. There is no corroborating evidence, such as DNA test results for example, establishing that [REDACTED] is not the applicant's mother. The AAO must therefore find that [REDACTED] is the applicant's mother. [REDACTED] became a U.S. citizen after the applicant's eighteenth birthday. Former section 321(a)(1) of the Act requires the naturalization of both parents prior to the applicant's eighteenth birthday. The applicant did not derive U.S. citizenship under former section 321 of the Act because his mother did not naturalize prior to his eighteenth birthday.

"There must be strict compliance with all the congressionally imposed prerequisites to the acquisition of citizenship." [REDACTED]. 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 not met his burden of proof, and his appeal will be dismissed.

ORDER: The appeal is dismissed.