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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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FILE: [REDACTED] Office: HARTFORD, CT

Date:

FEB 02 2011

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship

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,

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Hartford, Connecticut, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant's Form N-600, Application for Certificate of Citizenship, indicated that he was born in Canada on October 24, 1968. He further indicated that he was adopted by [REDACTED] and [REDACTED] both native-born U.S. citizens. The applicant was admitted to the United States as a lawful permanent resident in 1972. He seeks a certificate of citizenship claiming that he derived U.S. citizenship through his adoptive parents.

The field office director denied the application finding that the applicant did not derive U.S. citizenship under former sections 320, 321, or 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1431, 1432 or 1433 (2000), or under the amendments enacted by the Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000).

On appeal, the applicant claims that he is a U.S. citizen by virtue of his Native American descent. See Statement of the Applicant on Form I-290B, Notice of Appeal to the AAO.

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). 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, 8 U.S.C. § 1432, 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.

(b) Subsection (a) of this section shall apply to an adopted child only if the child is residing in the United States at the time of naturalization of such adoptive parent or parents, in the custody of his adoptive parent or parents, pursuant to a lawful admission for permanent residence.

The applicant's adopted parents are native-born U.S. citizens and did not naturalize as required by former section 321(a)(1) of the Act. Moreover, subsection (b) of former section 321 of the Act, above, which was added by the Act of October 5, 1978, Pub. L. No. 95-417, 92 Stat. 917, does not apply retroactively. *See* INS Interpretation 320.1(d)(2) (finding that the amendment applies only prospectively to citizenship that vests after October 5, 1978). The applicant was adopted in 1973. Adopted children were not eligible to derive U.S. citizenship until October 5, 1978. Therefore, the applicant did not derive U.S. citizenship through his adoptive parents pursuant to former section 321 or any other provision of the Act.

The applicant does not dispute the field office director's finding that he did not derive U.S. citizenship under sections 320, 321 or 322 of the Act. Instead, he claims on appeal that he is a U.S. citizen because of his Native American tribal affiliation. Section 301(b) of the Act, 8 U.S.C. § 1401(b), provides, in relevant part, that a person born in the United States to a member of an Indian, Eskimo, Aleutian, or other aboriginal tribe is a national and citizen of the United States at birth. The applicant, however, was not born in the United States. Furthermore, citizenship claims arising under section 301(b) of the Act are not included among the provisions for which a certificate of citizenship must be issued in section 341 of the Act, 8 U.S.C. § 1452. Certificates of citizenship are issued pursuant to section 341 of the Act, 8 U.S.C. § 1452. Section 341 of the Act does not provide authority to the Department of Homeland Security or U.S. Citizenship and Immigration Services (USCIS) to issue proof of citizenship to individuals seeking proof of citizenship arising under section 301(b) of the Act. The applicant's appeal will therefore be dismissed.

ORDER: The appeal is dismissed.