

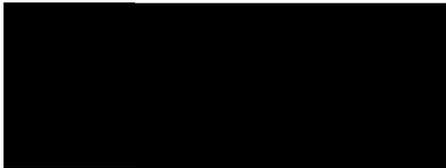
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS2090  
Washington, DC 20529-2090



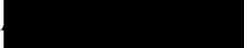
U.S. Citizenship  
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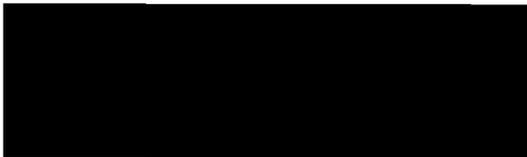
FILE: 

IN RE:

Applicant: 

APPLICATION: Application for Certificate of Citizenship under Former Section 321 of the Immigration and Nationality Act; 8 U.S.C. § 1432 (1976)

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 Santa Ana, California Field Office. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,



Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The application for a certificate of citizenship was denied by the director of the Philadelphia Field Office and the Administrative Appeals Office (AAO) dismissed the subsequent appeal. The AAO is now reopening the matter upon its own motion. The prior decision of the AAO will be withdrawn. The appeal will be sustained and the matter will be returned to the Philadelphia Field Office for issuance of a certificate of citizenship.

The record indicates that the applicant was born on December 4, 1976 in the former Soviet Union. The applicant's father and mother became U.S. citizens upon their naturalization in 1986 and 1994 respectively. The applicant was paroled into the United States on September 25, 1978. He seeks a certificate of citizenship claiming that he acquired citizenship through his parents under former section 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432 (1976).

The applicable law for transmitting citizenship to a child born abroad is the statute that was in effect at the time of the child's birth. *See Chau v. INS*, 247 F.3d 1026, 1028 n.3 (9<sup>th</sup> Cir. 2001). As the applicant was born abroad in 1976, former section 321 of the Act is applicable to this case.<sup>1</sup> Former section 321 of the Act provided, 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;

\* \* \*

(3) . . . and if-

(4) Such naturalization takes place while said child is 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 thereafter begins to reside permanently in the United States while under the age of eighteen years.

Section 101(a)(20) of the Act, 8 U.S.C. § 1101(a)(20), defines the term, "lawfully admitted for permanent residence" as "[t]he status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed."

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<sup>1</sup> The Child Citizenship Act of 2000 (CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), does not apply to the applicant because he was over 18 years-old when the CCA went into effect on February 27, 2001. *See CCA § 104; Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001).

The field office director denied the applicant's citizenship claim finding that he had not been admitted as a lawful permanent resident prior to his eighteenth birthday, and was therefore ineligible for U.S. citizenship under former section 321 of the Act. In its prior decision, the AAO dismissed the appeal on the same ground.

On March 23, 2011, after the AAO's prior decision was issued, an immigration judge granted the applicant adjustment of status to lawful permanent residency under section 209(a) of the Act, 8 U.S.C. § 1159(a), which states, in pertinent part:

(2) Any alien who is found upon inspection and examination by an immigration officer pursuant to paragraph (1) or after a hearing before an immigration judge to be admissible . . . as an immigrant under this Act at the time of the alien's inspection and examination shall, notwithstanding any numerical limitation specified in the Act, be regarded as lawfully admitted to the United States for permanent residence as of the date of such alien's arrival into the United States.

Given the change in the applicant's immigration status, the AAO hereby reopens the administrative proceedings regarding the application for a certificate of citizenship pursuant to the regulation at 8 C.F.R. § 103.5(a)(5)(i).

Pursuant to section 209(a)(2) of the Act, the applicant is now regarded as having been lawfully admitted for permanent residence as of his arrival in the United States on September 25, 1978 when he was one year-old. Accordingly, he acquired U.S. citizenship under former section 321 of the Act on January 28, 1994 when his mother was naturalized.

In certificate of citizenship proceedings, the claimant bears the burden of proof to establish the claimed citizenship by a preponderance of the evidence. Section 341 of the Act, 8 U.S.C. § 1452; 8 C.F.R. § 341.2(c). The applicant has met his burden.

The February 18, 2010 decision of the AAO will be withdrawn. The appeal will be sustained and the matter will be returned to the Philadelphia Field Office for issuance of a certificate of citizenship.

**ORDER:** The February 18, 2010 decision of the Administrative Appeals Office is withdrawn. The appeal is sustained and the matter is returned to the Philadelphia Field Office for issuance of a certificate of citizenship.