

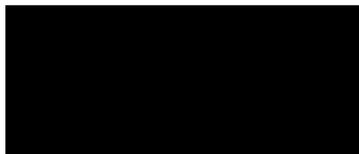
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



E₂

Date: **JUN 27 2011** Office: PHILADELPHIA, PA

FILE: 

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for Certificate of Citizenship under Former Section 321 of the Immigration and Nationality Act; 8 U.S.C. § 1432 (repealed).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

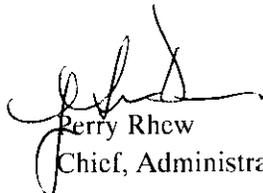
SELF-REPRESENTED

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,

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, Philadelphia, Pennsylvania. 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 May 12, 1969 in Jamaica. The applicant's parents are [REDACTED]. The applicant was admitted to the United States as a lawful permanent resident in 1978, on the basis of a petition for alien relative filed by his father's spouse, [REDACTED]. The applicant presently seeks a certificate of citizenship pursuant to former section 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432 (repealed), claiming that he derived U.S. citizenship upon his mother's naturalization.

The field office director determined that the applicant could not derive U.S. citizenship under former section 321 of the Act because he had failed to establish that either of his biological parents naturalized prior to his eighteenth birthday. The application was accordingly denied.

On appeal, the applicant maintains that his biological mother is [REDACTED], who naturalized in 1986. The applicant claims that he derived U.S. citizenship upon her naturalization.

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 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 obtained lawful permanent residency in 1978, on the basis of a petition filed by his step-mother. The record suggests that his biological father, who passed away in 2007 or 2008, was not a U.S. citizen. The record further suggests that the applicant's biological parents were married, and divorced in 1975. The applicant claims that his biological mother is [REDACTED], and that she naturalized in 1986. The record contains a copy of [REDACTED] marriage certificate, evidencing her marriage to [REDACTED] in May 1979 and listing [REDACTED] as her former husband (whom she divorced in 1975). The record also contains a copy of the divorce judgment terminating the marriage of [REDACTED] and [REDACTED] on [REDACTED].

The field office director denied the applicant's claim upon finding that neither of his biological parents naturalized. The record contains no evidence of the applicant's father's naturalization. The applicant maintains that [REDACTED] is his biological mother, but, as discussed below, her naturalization alone could not provide the basis for the applicant's citizenship.¹

Former section 321(a)(1) of the Act allows for the derivation of U.S. citizenship by a child upon the naturalization of both parents. The applicant cannot establish that both his parents were naturalized as there is no evidence of his father's citizenship. Former section 321(a)(2) of the Act provides for derivation of U.S. citizenship upon the naturalization of the surviving parent, but this section is inapplicable to the applicant because his father passed away after the applicant's eighteenth birthday. Former section 321(a)(3) of the Act allows for the derivation of U.S. citizenship upon the naturalization of the custodial parent where there has been a legal separation of the parents. The record in this case suggests that the applicant's parents were divorced in 1975, but the applicant's immigration record reflects that the applicant was in his father's custody. The applicant also could

¹ It is therefore unnecessary to determine whether [REDACTED] is the applicant's biological mother.

not derive U.S. citizenship as the out of wedlock child of a U.S. citizen mother under the second clause of former section 321(a)(3) of the Act because the record indicates that he was born in wedlock, and that he was legitimated. Thus, the applicant cannot establish that he derived U.S. citizenship solely upon the naturalization of his mother. The applicant therefore did not derive U.S. citizenship under former section 321 of the Act, or any other provision of law.

“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 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.