

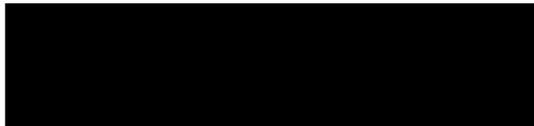
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE:



Office: NEW YORK, NY

Date:

MAR 07 2011

IN RE:

Applicant:



APPLICATION:

Application for Certificate of Citizenship under Former Section 320 of the
Immigration and Nationality Act; 8 U.S.C. §1431

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 District Director, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on January 1, 1978 in Yemen. The applicant was admitted to the United States as a lawful permanent resident on November 14, 1995. The applicant's father [REDACTED] became a U.S. citizen upon his naturalization on November 14, 1975. The applicant's mother passed away in 1982. The applicant's father passed away in 2009. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship through his father pursuant to former section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431 (2000).

The district director denied the application upon finding that the applicant was over the age of 18 years when the Child Citizenship Act of 2000 (CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), became effective. The director thus found the applicant ineligible for U.S. citizenship under section 320 of the Act, as amended by the CCA. The director also found that the applicant had failed to establish that his father had the required physical presence in the United States to transmit U.S. citizenship pursuant to section 301 of the Act, 8 U.S.C. § 1431. The director further considered the applicant's claim under former section 321 of the Act, 8 U.S.C. § 1432 (repealed), and found the applicant ineligible under that provision as well.

On appeal, the applicant, through counsel, claims that he acquired U.S. citizenship under former section 320 of the Act, as in effect prior to the CCA. *See* Appeal Brief and Applicant's Statement in Form I-290B, Notice of Appeal to the AAO. The applicant also maintains that the director erred in questioning the validity of his birth certificate. *Id.*

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." *See Minasyan v. Gonzales*, 401 F.3d 1069, 1075 (9th Cir. 2005). Section 320 of the Act, as amended by the CCA, took effect on February 27, 2001. CCA § 104. The CCA only benefits persons who had not yet reached their eighteenth birthdays as of February 27, 2001. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). Because the applicant was over the age of 18 years on February 27, 2001, he does not meet the age requirement for benefits under the CCA. Former sections 320, 321 and 322 of the Act, 8 U.S.C. §§ 1431, 1432, and 1433, as in effect prior to February 27, 2001, are therefore applicable to this case.

The applicant did not acquire U.S. citizenship under former sections 320 or 321 of the Act because these sections provided for acquisition of U.S. citizenship upon the naturalization of the child's alien parent. Former section 320(a) of the Act provided, in relevant part, for the acquisition of U.S. citizenship by:

A child born outside the United States, one of whose parents at the time of the child's birth was an alien and the other of whose parents then was and never thereafter ceased to be a citizen of the United States . . . if such alien parent is naturalized.

At the time of the applicant's birth, his father was already a U.S. citizen and his mother was an alien. The applicant's mother, his "alien parent," did not naturalize. Former section 320 of the Act therefore is inapplicable to the applicant's case.

Former section 321 of the Act likewise only applies to a child "born . . . of alien parents, or of an alien parent and a citizen parent who has subsequently lost citizenship . . ." and provides for the derivation of U.S. citizenship upon the naturalization of both parents (unless the other one is deceased, where the applicant was born out of wedlock, or where there has been a legal separation of the parents). The applicant was not "born . . . of alien parents." The applicant's father became a U.S. citizen in 1975, three years before the applicant's birth.

The applicant also fails to qualify for U.S. citizenship under former section 322 of the former Act. Section 322 of the former Act provided, in pertinent part, that:

(a) 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) 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.

Even if the applicant fulfilled the requirements of former section 322(a) of the Act, former section 322(b) of the Act required him to establish that his application for citizenship was approved, and that he took the oath of allegiance, prior to his eighteenth birthday. The applicant did not meet the requirements set forth in former section 322(b) of the Act because he did not apply for a certificate of citizenship before he turned 18, because no such application was approved, and because he did not take the oath of allegiance prior to his eighteenth birthday.

Lastly, the applicant also did not acquire U.S. citizenship at birth pursuant to section 301(a)(7) of the former Act, 8 U.S.C. § 1401(a)(7).¹ The applicant does not claim to have acquired U.S. citizenship at birth under this provision, nor is there any evidence in the record to suggest that his father had the required physical presence in the United States to transmit U.S. citizenship.

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). The applicant is statutorily ineligible for U.S. citizenship under former section 320 of the Act or any other provision of law. His appeal will therefore be dismissed.

ORDER: The appeal is dismissed.

¹ Former section 301(a)(7) of the Act, as in effect in 1976, provided that the following shall be nationals and citizens of the United States at birth:

[A] person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years . . .