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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

[redacted]

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Date: AUG 1 6 2012 Office: KENDALL, FL FILE: [redacted]

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for Certificate of Citizenship under former Section 321 of the Immigration and Nationality Act; 8 U.S.C. § 1432 (repealed)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

[redacted]

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630, or a request for a fee waiver. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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, Kendall, Florida. 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 February 2, 1979 in Honduras. The applicant's parents are [redacted]. The applicant's parents were not married to each other. The applicant's mother became a U.S. citizen upon her naturalization on November 22, 1996, when the applicant was 17 years old. The applicant was admitted to the United States as a lawful permanent resident on August 31, 1995, when he was 16 years old. 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of citizenship pursuant to former section 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432 (repealed).

The acting field office director determined that the applicant could not derive U.S. citizenship upon the naturalization of his mother because he was legitimated under Honduran law. On appeal, the applicant, through counsel, maintains that he was not legitimated. *See* Statement of the Applicant on Form I-290B, Notice of Appeal to the AAO. The AAO notes that counsel indicates that a brief or additional evidence would be submitted to the AAO within 30 days of filing the appeal but, to date, no such brief or additional evidence has been received. Thus, the record now before the AAO is deemed complete.

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). Former section 321 of the Act is therefore applicable in this case. *See Matter of Rodriguez-Tejedor,* 23 I&N Dec. 153 (BIA 2001) (holding that the Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), which repealed former section 321 of the Act, applies only to persons who were not yet 18 years old as of February 27, 2001).

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 1995 and that his mother naturalized in 1996. Thus, the applicant satisfied several of the requirements for derivative citizenship set forth in former section 321(a) of the Act before his eighteenth birthday. However, the applicant's father is not a U.S. citizen. Thus, the applicant did not derive U.S. citizenship under former section 321(a)(1) of the Act, which requires the naturalization of both parents. The record also does not indicate that the applicant's father was deceased prior to the applicant's eighteenth birthday and he is consequently ineligible to derive U.S. citizenship from his mother alone under former section 321(a)(2) of the Act. The applicant is also ineligible to derive citizenship through his mother under the first clause of former section 321(a)(3) of the Act because his parents were never married, and therefore never "legally separated." Lastly, the applicant was legitimated under Honduran law and therefore his paternity was established and he could not derive U.S. citizenship solely through his mother under the second clause of former section 321(a)(3) of the Act.[1] Consequently, the applicant did not derive citizenship upon his mother's naturalization under former section 321(a) of the Act.

Former section 321(a)(3) of the Act allows for the derivation of U.S. citizenship by a child born out of wedlock upon the naturalization of the mother where "the paternity of the child has not been established by legitimation." The applicant consequently did not derive citizenship under subsections (1) or (2) of former section 321 of the Act. 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.

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[1] The Honduran Constitution, effective December 21, 1957, eliminated the distinction between legitimate, legitimated, and natural children and accorded children equal rights and duties. *See Matter of Sanchez*, 16 I&N Dec. 671 (BIA 1979). Further, the applicant was formally recognized by his father on February 27, 1979, as reflected in his birth certificate.