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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]

E<sub>2</sub>

Date: JUL 05 2012 Office: CLEVELAND, OH FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under Former Sections 321 and 322 of the Immigration and Nationality Act; 8 U.S.C. §§ 1432 and 1433 (2000)

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 Field Office Director, Cleveland, Ohio, 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 October 11, 1982. The applicant's eighteenth birthday was on October 11, 2000. The applicant's parents, as indicated on his birth certificate, are [REDACTED]. The applicant's father became a U.S. citizen upon his naturalization on January 21, 1994, when the applicant was 13 years old. The applicant was admitted to the United States as a lawful permanent resident on January 6, 1995, when he was 12 years old. The applicant seeks a certificate of citizenship claiming that he derived U.S. citizenship upon his admission as a lawful permanent resident through his U.S. citizen father.

The field office director denied the application upon finding that the applicant did not derive U.S. citizenship pursuant to former section 321 of the Act, 8 U.S.C. § 1432, as in effect prior to its repeal by the Child Citizenship Act of 2000 (CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000). The director noted that the applicant's father had testified that he was never married. The director concluded that the applicant could not establish that both his parents naturalized, or that he could derive U.S. citizenship solely through his father.

On appeal, the applicant, through counsel, maintains that he derived U.S. citizenship pursuant to former section 322 of the Act, 8 U.S.C. § 1433, as in effect prior to the CCA. *See* Appeal Brief. Counsel states that the applicant satisfied all the requirements of former section 322 of the Act prior to his eighteenth birthday. *Id.*

Sections 321 and 322 of the Act were amended by the CCA. CCA § 104. The CCA, which took effect on February 27, 2001, benefits only those persons who were under the age of 18 as of that date. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). Because the applicant was over the age of 18 on February 27, 2001, former sections 321 and 322 of the Act apply to his case.

Former section 321(a) of the Act provided, in pertinent part:

A child born outside of the United States of alien parents . . . 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 such child is unmarried and 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 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 eighteen years.

Here, the applicant satisfied several of the requirements for derivative citizenship set forth in former section 321(a) of the Act before his eighteenth birthday. Specifically, prior to the applicant's eighteenth birthday, he was admitted to the United States as a lawful permanent resident and his father naturalized. However, the applicant's mother 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 mother was deceased prior to the applicant's eighteenth birthday and he is consequently ineligible to derive U.S. citizenship from his father alone under former section 321(a)(2) of the Act. The applicant is also ineligible to derive citizenship through his father under the first clause of former section 321(a)(3) of the Act because the testimony provided by the applicant's father indicates that he was never married, and therefore never "legally separated." Lastly, as noted above, the applicant's mother is not a U.S. citizen, so the applicant could not derive U.S. citizenship solely through her under the second clause of former section 321(a)(3) of the Act. Consequently, the applicant did not derive citizenship through his father under former section 321(a) of the Act.

The AAO also notes that, contrary to counsel's claim, the applicant fails to qualify for U.S. citizenship under former section 322 of the Act.

Former section 322 of the 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.

The AAO notes that, whether or not an applicant satisfied the requirements set forth in former section 322(a) of the Act, he is required to establish that his application for citizenship was approved, and that he took the oath of allegiance, prior to his eighteenth birthday. The applicant in the present case 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 adjudicated or approved, and because he did not take an oath of allegiance prior to his eighteenth birthday.

The applicant bears the burden of proof to establish his eligibility for citizenship under the Act. Section 341 of the Act, 8 U.S.C. § 1452; 8 C.F.R. § 341.2(c). Here, the applicant has not established that he met all of the conditions for the automatic derivation of U.S. citizenship pursuant to former section 321 of the Act or that an application for a certificate of citizenship under former section 322 of the Act was filed, adjudicated and approved before his eighteenth birthday. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.