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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



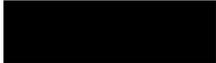
**U.S. Citizenship
and Immigration
Services**



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Date: **JUN 14 2012**

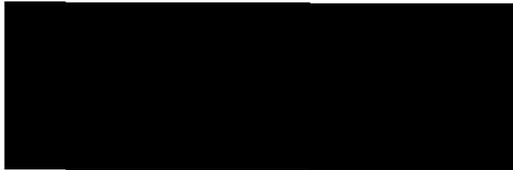
Office: NEWARK, NJ

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for Certificate of Citizenship under Former Section 321 of the Immigration and Nationality Act; 8 U.S.C. § 1432 (repealed).

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 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 with the field office or service center that originally decided your case by filing a 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, Newark, New Jersey. 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 in Guyana [REDACTED]. The applicant's parents are [REDACTED]. The applicant's parents were married [REDACTED]. They were divorced in [REDACTED]. The applicant was admitted to the United States as a lawful permanent resident on May 13, 1987. His father became a U.S. citizen upon his naturalization on November 24, 1992. The applicant's mother naturalized on February 10, 1996, after the applicant's eighteenth birthday. The applicant currently seeks a certificate of citizenship claiming that he derived U.S. citizenship upon his father's naturalization.

The field office director determined that the applicant did not derive U.S. citizenship under former section 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432 (repealed), because he was not in his father's custody following his parents' divorce. The application was accordingly denied.

On appeal, the applicant, through counsel, maintains that he derived U.S. citizenship through his father because he was in his father's legal custody after his sixteenth birthday. See Statement of the Applicant on the Form I-290B, Notice of Appeal to the AAO. Counsel requests the opportunity to provide oral argument in support of the applicant's claim. See Counsel's Letter to AAO.¹

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. The applicant was over the age of 18 when the CCA went into effect, and he is therefore 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 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 Counsel's request for oral argument is denied. The AAO has the sole authority to grant or deny a request for oral argument and will grant argument only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. See 8 C.F.R. § 103.3(b). In this instance, the written record of proceeding fully represents the facts and issues in this matter that can be adequately addressed in writing. Consequently, the request for oral argument is denied.

- (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 1987 and that his father naturalized in 1992. The applicant has thus established that his U.S. citizen father naturalized and that he was admitted to the United States as a lawful permanent resident prior to his eighteenth birthday in 1995. At issue in this case is whether the applicant's father had legal custody of the applicant following his parent's divorce in 1988.

Legal custody vests by virtue of "either a natural right or a court decree". *See Matter of Harris*, 15 I&N Dec. 39, 41 (BIA 1970). The applicant's parents' divorce decree does not include a custody order. *See Divorce Decree*. The evidence in the record, including the applicant's school records, indicates that the applicant was residing with his mother at the time. The applicant and his parents state in their respective affidavits that the applicant frequently visited his father and ultimately, at the age of 16, began residing with him. There is no documentary evidence in the record to corroborate the applicant's claim in this regard.

In derivative citizenship cases where the parents have legally separated but there is no formal, judicial custody order, the parent having "actual, uncontested custody" will be regarded as having "legal custody" of the child. *Bagot v. Ashcroft*, 398 F.3d 252, 266-67 (3d Cir. 2005) (citing *Matter of M-*, 3 I&N Dec. 850, 856 (Cent. Office 1950)). The record establishes that the applicant immigrated with his mother, and resided with her. As noted above, the record does not contain any documentary evidence to corroborate the applicant's claim that he moved from his mother's to his father's residence in 1993. In fact, documentary evidence in the record indicates that the applicant was residing with his mother from 1992 to 1993. *See East Orange Campus High School Transcript*. The applicant's parents' naturalization applications both confirm that the applicant was residing

with his mother prior to his father's naturalization. Accordingly, the applicant cannot demonstrate that he was in his father's actual custody and did not derive citizenship under former section 321(a)(3) of the Act.

“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). A certificate of citizenship cannot be granted where the applicant is statutorily ineligible, in order “to promote marital and family harmony” as counsel suggests. *See* Appeal Brief at 14. 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.