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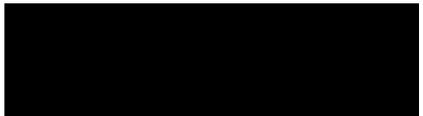
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

## PUBLIC COPY

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Date: **MAR 16 2012**

Office: ORLANDO, FL

FILE: 

IN RE:

Applicant: 

APPLICATION:

Application for Certificate of Citizenship under former Section 322 of the Immigration and Nationality Act; 8 U.S.C. § 1433 (1994).

ON BEHALF OF APPLICANT:

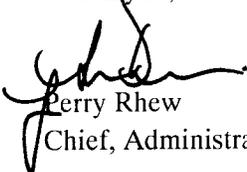


### INSTRUCTIONS:

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 Field Office Director, Orlando, Florida, and 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 August 9, 1976 in Jamaica. The applicant was adopted by [REDACTED] and [REDACTED] in 1991. The applicant's adoptive mother became a U.S. citizen upon her naturalization on June 2, 1981. The applicant became a lawful permanent resident of the United States on April 29, 1994. The applicant seeks a certificate of citizenship claiming that he derived U.S. citizenship through his adoptive mother.

The field office director denied the application upon finding that the applicant was already over the age of 18 years and therefore ineligible for citizenship under former section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433 (1994).

On appeal, the applicant, through counsel, maintains that he derived U.S. citizenship through his mother under former section 321 of the Act, 8 U.S.C. § 1432, because he complied with all the requirements for transmission of citizenship under that provision prior to his eighteenth birthday. See Applicant's Appeal Brief.

The applicable law for derivative citizenship purposes is that 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 sections 321 and 322 of the Act were repealed and amended, respectively, by the Child Citizenship Act of 2000 (CCA), which took effect on February 27, 2001. The provisions of the CCA are not retroactive and apply only to persons who were not yet 18 years old 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 on February 27, 2001, former sections 321 and 322 of the Act, as in effect prior to the CCA, 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.

(b) Subsection (a) of this section shall apply to an adopted child only if the child is residing in the United States at the time of naturalization of such adoptive parent or parents, in the custody of his adoptive parent or parents, pursuant to a lawful admission for permanent residence.

The last event giving rise to eligibility for U.S. citizenship for the applicant under former section 321 of the Act was his eighteenth birthday in August 1994. The applicant became a lawful permanent resident of the United States in April 1994. His adoptive mother's naturalized in 1981. As of his eighteenth birthday, the applicant was the adopted child of a U.S. citizen. However, the applicant was not residing in the United States pursuant to a lawful admission for permanent residence at the time of his adoptive mother's naturalization in 1981, as is required by former section 321(a)(5) and 321(b) of the Act. *See Smart v. Ashcroft*, 401 F.3d 119, 123 (2<sup>nd</sup> Cir. 1005). The applicant therefore did not derive U.S. citizenship upon the naturalization of his adoptive mother under former section 321 of the Act.

The AAO further finds that director correctly determined that the applicant was ineligible for a certificate of 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 satisfies 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 AAO finds that 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 approved, and because he did not take an oath of allegiance prior to his eighteenth birthday.

“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 applicant must meet his burden of proof by establishing the claimed citizenship by a preponderance of the evidence. Here, the applicant has not met this burden. Accordingly, the applicant is not eligible for a certificate of citizenship under any provision of law and his appeal will be dismissed.

**ORDER:** The appeal is dismissed.