

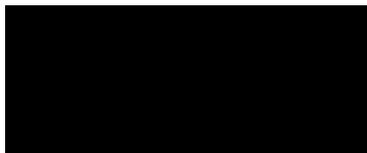
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
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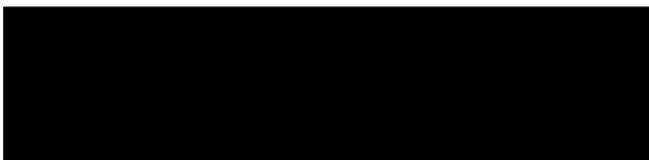
Office: ST. PAUL, MN

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for Certificate of Citizenship under Former Section 321 of the Immigration and Nationality Act; 8 U.S.C. § 1432 (repealed).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

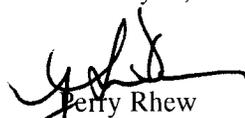


INSTRUCTIONS:

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 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, St. Paul, Minnesota. 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 [REDACTED] 1971 in Barbados. The applicant's parents, as reflected in his birth certificate, are [REDACTED] and [REDACTED]. The applicant's parents were married in 1965, and divorced in 1978. The applicant's father became a U.S. citizen upon his naturalization on [REDACTED] 1984, when the applicant was 12 years old. The applicant was admitted to the United States as a lawful permanent resident in 1987, when he was 15 years old. The applicant seeks a certificate of citizenship claiming that he automatically derived U.S. citizenship through his father.

The field 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 (1989), because he did not submit evidence that he was in his father's legal custody prior to his eighteenth birthday. The application was accordingly denied.

On appeal, the applicant, through counsel, maintains that he was in his father's legal custody, as evidenced by his immigration to the United States and a contemporaneous document executed by his mother ceding custody to his father.

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 (9<sup>th</sup> 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's eighteenth birthday was in 1989. Because the applicant was over the age of 18 on February 27, 2001, he is 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 therefore 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) 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 1984. 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. At issue in this case is whether the applicant's father had legal custody of the applicant following his parent's 1978 divorce.

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 divorce decree indicates, however, that the applicant's father was to pay child support to his mother with whom the applicant was apparently residing. In 1987, the applicant was admitted to the United States as a lawful permanent resident. The record includes a contemporaneous letter from the applicant's mother stating that she had no objection to the applicant's U.S. immigration.

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 to the United States on the basis of an approved alien relative petition filed by his father. The applicant's immigrant visa application stated that his purpose in going to the United States was to reunite with his father. The applicant's immigrant visa and alien registration list his father's address at the time. As previously noted, the applicant's mother stated in writing at the time that she had no objection to the applicant's immigration and reunification with his father in the United States. Nevertheless, the record does not contain any evidence, such as school records, to establish that the applicant was in fact in his father's custody once he arrived in the United States. 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). 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 failed to meet his burden of proof, and his appeal will be dismissed.

**ORDER:** The appeal is dismissed.