

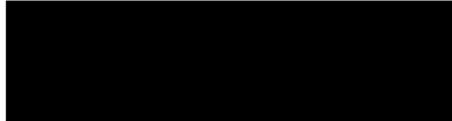
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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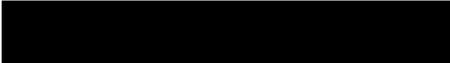
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Date: **MAY 23 2012**

Office: ATLANTA, GA

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Immigration and Nationality Act; 8 U.S.C. § 1432 (repealed).

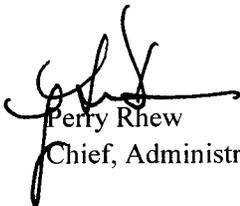
ON BEHALF OF APPLICANT:



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.

Thank you,



Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Atlanta, Georgia. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant was born on [REDACTED] 1981 in Nicaragua. The applicant's parents are [REDACTED] and [REDACTED]. The applicant's parents were married in 1981 and divorced in 1993 in Nicaragua. The applicant's mother became a U.S. citizen upon her naturalization on [REDACTED] 1996, when the applicant was 15 years old. The applicant was admitted to the United States as a lawful permanent resident in 1997. He currently seeks a certificate of citizenship claiming that he derived U.S. citizenship through his mother.

The field office director determined that the applicant could 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 mother'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 mother because he was always in his mother's custody, including when she was living in the United States while he was still in Nicaragua. See Statement of the Applicant on the Form I-290B, Notice of Appeal to the AAO. The applicant, through counsel, claims that his father transferred physical custody and guardianship to his mother in 1994, and that she never lost legal custody. See Appeal Brief.

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. 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) 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 1997 and that his mother naturalized in 1996. The applicant has thus established that his U.S. citizen mother naturalized and that he was admitted to the United States as a lawful permanent resident prior to his eighteenth birthday in 1999. At issue in this case is whether the applicant's mother had legal custody of the applicant following his parent's 1993 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 judgment states in unequivocal terms that the custody of the applicant corresponds to his father. The applicant, through counsel, cites *Matter of Baires-Larios*, 24 I&N Dec. 467 (BIA 2008), in support of his claim that the applicant need only show that he was in his mother's custody at any time prior to his eighteenth birthday. The evidence in the record suggests that the applicant began residing with his mother upon his admission to the United States as a lawful permanent resident in 1997.

_____ and Judge, reviewed the applicant's parents' divorce decree and stated in his affidavit that the decree did not determine the applicant's mother's legal custody, even though physical custody of the applicant was awarded to his father. *See* Judge's Affidavit at ¶¶ 4-6. The Judge explains that the applicant's mother maintained legal custody of the applicant since her divorce and obtained his sole guardianship in 1994 when the applicant's father executed a document transferring custody. *Id.* at ¶¶ 5-6. Therefore, the applicant was in his mother's legal custody when he was admitted to the United States as a lawful permanent resident and derived U.S. citizenship through her 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 met his burden of proof, and his appeal will be sustained.

ORDER: The appeal is sustained.