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]

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Date: OCT 01 2012 Office: BUFFALO, NY FILE: [redacted]

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship under Former Section 321 of the Immigration and Nationality Act, 8 U.S.C. § 1431 (1992)

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 for Certificate of Citizenship (Form N-600) was denied by the Buffalo, New York Field Office Director (the director), and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The application will remain denied.

Pertinent Facts and Procedural History

The applicant was born in Nigeria on [redacted] 1965. The applicant states that his parents were married after his birth on [redacted] 1971. The applicant's father became a U.S. citizen on [redacted] 1977 when the applicant was eleven years old. The applicant's mother became a U.S. citizen on [redacted] 1992 when the applicant was twenty-seven years old. The applicant was admitted to the United States as a lawful permanent resident on [redacted] 1982, when he was sixteen years old. The applicant seeks a Certificate of Citizenship under former section 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432, claiming that he derived citizenship through his father.

The director determined that the applicant failed to establish eligibility for derivative citizenship because he failed to establish that his mother was deceased or he was in his father's legal custody pursuant to a legal separation at the time of his father's naturalization. The director also determined that the applicant was ineligible for derivative citizenship because his mother naturalized after he turned eighteen. On appeal, the applicant contends that he had been in his father's custody since birth while his mother was in school in Nigeria.

Applicable Law

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Because the applicant was born abroad, he is presumed to be an alien and bears the burden of establishing his claim to U.S. citizenship by a preponderance of credible evidence. *See Matter of Baires-Larios*, 24 I&N Dec. 467, 468 (BIA 2008).

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); *accord Jordon v. Attorney General*, 424 F.3d 320, 328 (3d Cir. 2005). Former section 321(a) of the Act, in effect at the time the applicant's mother became a U.S. citizen, is applicable in this 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.

Analysis

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The applicant has not shown that he derived U.S. citizenship under any provision of former section 321(a) of the Act.[1]

The applicant has not met the requirements of former section 321(a)(1) of Act because his mother became a U.S. citizen when the applicant was twenty-seven years old. The applicant also has not met the requirements of former section 321(a)(2) of the Act because his mother is not deceased. The first clause of former section 321(a)(3) of the Act is also inapplicable because the applicant's parents, who remain married, have never legally separated.[2] The applicant is also ineligible for derivative U.S. citizenship under the second clause of former section 321(a)(3) of the Act because, although the applicant was born out of wedlock, his paternity was established by legitimation when his parents married. *Matter of Coker*, 14 I. & N. Dec. 521 (BIA 1974). The applicant's admission to the United States as a lawful permanent resident at the age of sixteen satisfies the requirements of former section 321(a)(5) of the Act; however, without also establishing the requirements of former section 321(a)(1), (2) or (3) of the Act, he cannot demonstrate that he derived U.S. citizenship from one or both of his parents.

While the director discussed the applicant's ineligibility under former section 322 of the Act, 8 U.S.C. § 1432 (1977), that provision is inapplicable to this case. The applicant's immigration record contains no evidence that his father filed an application with the legacy Immigration and Naturalization Service (INS) to obtain a certificate of citizenship on the applicant's behalf and that the applicant took the requisite oath of allegiance prior to his eighteenth birthday.

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[1] The qualifying events listed at former sections 321(a)(1), (2) and (3) of the Act must have occurred while the applicant was under the age of eighteen. *See* Former section 321(a)(4) of the Act.

[2] On the Form N-600, the applicant listed his mother as his father's current spouse.

Conclusion

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 before his eighteenth birthday. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed. The application remains denied.