



U.S. Citizenship
and Immigration
Services

E₂

[REDACTED]

Date: Office: HOUSTON, TX

FILE: [REDACTED]

OCT 12 2012
IN RE:

Applicant: [REDACTED]

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for Certificate of Citizenship under former Section 321 of the Immigration and Nationality Act; 8 U.S.C. § 1432 (repealed).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

[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 was denied by the Field Office Director, Houston, Texas, 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 in Honduras on February 5, 1977. The applicant was admitted to the United States as lawful permanent resident on October 27, 1991, when he was 14 years old. The applicant's [REDACTED] became a U.S. citizen upon her naturalization on November 18, 1993, when the applicant was 16 years old. The applicant's [REDACTED] is not a U.S. citizen. The applicant's parents were never married to each other. The applicant seeks a Certificate of Citizenship claiming that he derived citizenship upon his mother's naturalization.

The field office director determined that the applicant failed to establish eligibility for derivative citizenship under former section 321(a) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432 (repealed). The director concluded that the applicant was legitimated in accordance with the laws of Honduras and therefore could not derive U.S. citizenship solely through his mother. The application was denied accordingly.

On appeal, the applicant, through counsel, contends that the director erred in interpreting the term "legitimation." See Appeal Brief. Specifically, counsel maintains that the applicant was not legitimated by operation of law under Honduran law, where his father did not acknowledge him or take any steps to formally legitimate him. *Id.*

The AAO conducts appellate review on a de novo basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). 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 of the Act was in effect at the time of the applicant's mother's naturalization, and prior to the applicant's eighteenth birthday, and is therefore 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.

Here, the applicant satisfied two of the requirements for derivative citizenship set forth in former section 321(a) of the Act before his eighteenth birthday. Specifically, prior to the applicant's eighteenth birthday, he was admitted to the United States as a lawful permanent resident and his mother naturalized. However, the applicant's father is not a U.S. citizen. Thus, the applicant did not derive U.S. citizenship under former section 321(a)(1) of the Act, which requires the naturalization of both parents. The record also does not indicate that the applicant's father was deceased prior to the applicant's eighteenth birthday and he is consequently ineligible to derive U.S. citizenship from his mother alone under former section 321(a)(2) of the Act. The applicant is also ineligible to derive citizenship through his mother under the first clause of former section 321(a)(3) of the Act because his parents were never married, and therefore never "legally separated."

At issue in this case is whether the applicant can derive U.S. citizenship solely upon his mother's naturalization because he was born out of wedlock. The applicant maintains that his paternity was not established by legitimation. See Appeal Brief. Counsel further contends that the term "legitimation" is not consistently applied in acquisition and derivation of U.S. citizenship cases. *Id.* Under *Matter of Sanchez*, 16 I&N Dec. 671 (BIA 1979), children born in Honduras after December 21, 1957 are deemed legitimate for immigration purposes as a matter of law. As the Board in *Sanchez* explained, the Honduran Constitution, effective December 21, 1957, eliminated the distinction between legitimate, legitimated, and natural children and accorded children equal rights and duties. The AAO is bound by precedent decisions of the Board of Immigration Appeals. 8 C.F.R. § 103.3(c). The applicant is deemed to be the legitimate child of his father under Honduran law and consequently did not derive citizenship solely upon his mother's naturalization under former section 321(a) or any other provision of the Act.

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.