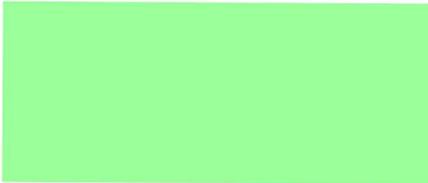


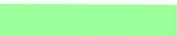


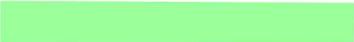
U.S. Citizenship  
and Immigration  
Services

(b)(6)



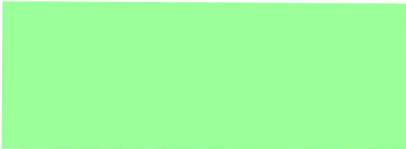
DATE: OFFICE: EL PASO, TX

FILE: 

IN RE: **APR 11 2013** 

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

ON BEHALF OF APPLICANT:

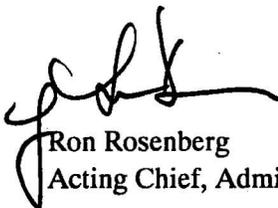


INSTRUCTIONS:

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 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,

  
Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Form N-600, Application for Certificate of Citizenship (Form N-600) was denied by the Field Office Director, El Paso, Texas (the director), and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant was born in the Dominican Republic on [REDACTED] to unwed parents. The applicant's father was born in the Dominican Republic and became a naturalized U.S. citizen on August 17, 1994, when the applicant was 17 years old. The applicant's mother was born in the Dominican Republic and is not a U.S. citizen. The applicant was admitted to the United States as a lawful permanent resident on March 5, 1992, when he was 15 years old. He seeks a certificate of citizenship pursuant to former section 321 of the Immigration and Nationality Act (the former Act), 8 U.S.C. § 1432, based on the claim that he acquired U.S. citizenship through his father.<sup>1</sup>

In a decision dated October 5, 2012, the director determined that the applicant failed to establish his father was a U.S. citizen at the time of his birth, as required by sections 309(a) and 301(a)(7), 8 U.S.C. §§ 1409(a) and 1401(a)(7), of the former Act. The director also found that the applicant failed to establish that he met requirements for U.S. citizenship as set forth in section 321 of the former Act. The application was denied accordingly.

The entire record was reviewed and considered in rendering a decision on the appeal.

"The applicable law for transmitting citizenship to a child born abroad when one parent is a U.S. citizen is the statute that was in effect at the time of the child's birth." *Chau v. INS*, 247 F.3d 1026, 1029 (9<sup>th</sup> Cir., 2000) (citations omitted).

Section 321 of the former Act provided 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-*

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<sup>1</sup> Counsel erroneously analyzes the applicant's eligibility for U.S. citizenship under sections 301 and 309 of the former Act, 8 U.S.C. §§ 1401 and 1409. Those former sections applied only to individuals who acquired U.S. citizenship at birth, not to individuals seeking to derive U.S. citizenship through the naturalization of one or both parents. Accordingly, this decision will only address the applicant's eligibility under former section 321 of the Act.

(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 (2) or (3) of this subsection, or thereafter begins to reside permanently in the United States while under the age of 18 years (emphasis added).

All persons who acquired citizenship automatically under section 321 of the former Act, as previously in force prior to February 27, 2001, may apply for a certificate of citizenship at any time. *Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001).

In the present matter, the record fails to establish that the applicant's mother is deceased or that she is a naturalized U.S. citizen. The applicant therefore failed to meet the requirements of section 321(a)(1) or (2) of the former Act. In addition, the applicant failed to establish that his parents were legally separated as required by section 321(a)(3) of the former Act.<sup>2</sup> The applicant has therefore failed to establish his claim to U.S. citizenship under section 321 of the former Act.

The regulation at 8 C.F.R. § 341.2(c) states that the burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. The applicant has failed to meet his burden in the present matter. The appeal will therefore be dismissed.

**ORDER:** The appeal is dismissed.

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<sup>2</sup> The applicant was legitimated by this father under the laws of the Dominican Republic. *Matter of Martinez-Gonzalez*, 21 I&N Dec. 1035 at 4 (BIA 1997).