



U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **FEB 19 2013**

Office: ORLANDO, FL

FILE: 

IN RE: Applicant: 

APPLICATION: Application for a Certificate of Citizenship under former Section 321(a) of the Act,
8 U.S.C. § 1432(a) (2000).

ON BEHALF OF APPLICANT:

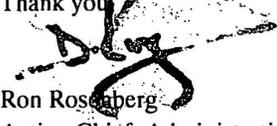
SELF-REPRESENTED

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 application was denied by the Acting Field Office Director, Orlando, Florida. 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 August 8, 1982 in Haiti. The applicant's parents, as indicated on his birth certificate, are [REDACTED] and [REDACTED]. The applicant was born out of wedlock. The applicant's father became a U.S. citizen upon his naturalization on May 24, 1995, when the applicant was 12 years old. The applicant's mother naturalized in 2004, when the applicant was over the age of 18. The applicant was admitted to the United States as a lawful permanent resident on March 10, 1998, when he was 15 years old. The applicant presently seeks a certificate of citizenship pursuant to former section 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432 (repealed).

The acting field office director determined that the applicant could not derive U.S. citizenship under former section 321 of the Act because only his father naturalized prior to his eighteenth birthday. The application was accordingly denied.

On appeal, the applicant maintains that he derived U.S. citizenship upon his father's naturalization. See Applicant's Statement on Form I-290B, Notice of Appeal. The applicant claims, *inter alia*, that he was in his father's legal custody. *Id.*

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. 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

(b)(6)

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 applicant's eighteenth birthday was on August 4, 2000. The record indicates that the applicant obtained lawful permanent residency and that his father naturalized prior to the applicant's eighteenth birthday. The applicant does not meet all of the prerequisites of former section 321 of the Act. Only one parent naturalized before the applicant turned 18 years of age. There was no legal separation of the parents. The applicant's mother is not deceased and she became a U.S. citizen after the applicant's eighteenth birthday. Thus, the applicant did not derive U.S. citizenship under former section 321 of the Act, or any other provision of law.

"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 not met his burden of proof, and his appeal will be dismissed.

ORDER: The appeal is dismissed.