



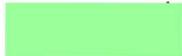
U.S. Citizenship  
and Immigration  
Services

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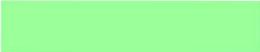


Date: **JAN 31 2013**

Office: YAKIMA, WA

FILE: 

IN RE:

Applicant: 

APPLICATION:

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

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 Field Office Director, Yakima, Washington, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant was born in Germany on January 9, 1958. He was adopted by his U.S. citizen step-father, [REDACTED], on November 13, 1964. The applicant was admitted to the United States as a lawful permanent resident on August 23, 1964. He sought a certificate of citizenship claiming that he derived U.S. citizenship through his adoptive father.

The field office director denied the application finding that the applicant did not derive U.S. citizenship under former sections 301, 309, 320, 321, or 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1401, 1409, 1431, 1432 or 1433 (2000), or under the amendments enacted by the Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000).

On appeal, the applicant continues to maintain that he derived U.S. citizenship through his adopted father. *See* Statement of the Applicant on Form I-290B, Notice of Appeal to the AAO.

The AAO reviews these proceedings *de novo*. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). 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 (9<sup>th</sup> 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).

The definition of “child” applicable to the citizenship and nationality provisions in Title III of the Act is contained in section 101(c) of the Act, 8 U.S.C. § 1101(c), and provides as follows:

...an unmarried person under twenty-one years of age and includes a child legitimated under the law of the child’s residence or domicile, or under the law of the father’s residence or domicile, whether in the United States or elsewhere, and except as otherwise provided in section 320 and 321 of the title III, a child adopted in the United States, if such legitimation or adoption takes place before the child reaches the age of 16 years . . . and the child is in the legal custody of the legitimating or adopting parent or parents at the time of such legitimation or adoption.

In contrast to Section 101(b) of the Act, 8 U.S.C. § 1101(b), the definition of “child” for Title III purposes does not include a “step-child.” The Act does not provide for derivation or acquisition of U.S. citizenship through a step-parent. Therefore, the applicant did not acquire U.S. citizenship at birth from his step-father under sections 301 or 309 of the Act.

Former section 321 of the Act, as in effect prior to the enactment of the CCA and while the applicant was under the age of 18, 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.

(b) Subsection (a) of this section shall apply to an adopted child only if the child is residing in the United States at the time of naturalization of such adoptive parent or parents, in the custody of his adoptive parent or parents, pursuant to a lawful admission for permanent residence.

The applicant's adopted father was a native-born U.S. citizen and did not naturalize as required by former section 321(a)(1) of the Act. Moreover, subsection (b) of former section 321 of the Act, above, which was added by the Act of October 5, 1978, Pub. L. No. 95-417, 92 Stat. 917, does not apply retroactively. *See* INS Interpretation 320.1(d)(2) (finding that the amendment applies only prospectively to citizenship that vests after October 5, 1978). The applicant was adopted in 1964. Adopted children were not eligible to derive U.S. citizenship until October 5, 1978. Therefore, the applicant did not derive U.S. citizenship through his adoptive father pursuant to 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 applicant must meet his burden of proof by establishing the claimed citizenship by a preponderance of the evidence. Section 341 of the Act, 8 U.S.C. § 1452; 8 CFR § 341.2. Here, the applicant has not

(b)(6)

Page 4

met this burden. Accordingly, the applicant is not eligible for a certificate of citizenship and the appeal will be dismissed.

**ORDER:** The appeal is dismissed.