

(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

Date: JUL 24 2013

Office: MIAMI, FL

FILE: [REDACTED]

IN RE: Respondent: [REDACTED]

APPLICATION: Application for Certificate of Citizenship pursuant to Former Section 321(a) of the Immigration and Nationality Act, 8 U.S.C. § 1432(a)(repealed).

ON BEHALF OF RESPONDENT:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg", written over a circular stamp or mark.

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Application for Certificate of Citizenship (Form N-600) was denied by the Field Office Director (the director), Miami, 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 in March 6, 1976 in Haiti. The applicant's father became a U.S. citizen upon his naturalization on November 15, 1984, when the applicant was eight years old. The applicant's mother became a U.S. citizen upon his naturalization on June 16, 1996, when the applicant was over the age of 18. The applicant obtained lawful permanent resident status in the United States on February 19, 1982, when the applicant was five years old. The applicant seeks a certificate of citizenship claiming that he derived U.S. citizenship automatically upon his father's naturalization.

The director determined that the applicant was statutorily ineligible for a certificate of citizenship under former section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433, as in effect prior to the enactment of the Child Citizenship Act of 2000 (the CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000). The director further found that the applicant did not acquire U.S. citizenship under section 320 of the Act, 8 U.S.C. § 1431, as amended, because he was over the age of 18 on the effective date of the CCA. The application was denied accordingly.

On appeal, the applicant states that he did not meet his mother until 1986, and that his father took on the role of mother and father. *See* Statement of the Applicant on Form I-290B, Notice of Appeal or Motion. The applicant contends that he derived U.S. citizenship upon his father's naturalization. *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). Because the applicant was over the age of 18 when the CCA amendments went into effect, former sections 320, 321 and 322 of the Act, as in effect prior to the enactment of the CCA, is the applicable law in this case. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001).

As noted by the director, former section 322 of the Act provided for acquisition of U.S. citizenship upon an application filed prior to the child's eighteenth birthday.¹ The applicant did not file any application for

¹ Former section 322 of the Act provided, in pertinent part, that:

(a) A parent who is a citizen of the United States may apply to the Attorney General [now the Secretary, Homeland Security, "Secretary"] for a certificate of citizenship on behalf of a child born outside the United States. The Attorney General [Secretary] shall issue such a certificate of citizenship upon proof to the satisfaction of the Attorney General [Secretary] that the following conditions have been fulfilled:

- (1) At least one parent is a citizen of the United States, whether by birth or naturalization.
- (2) The child is physically present in the United States pursuant to a lawful admission.
- (3) The child is under the age of 18 years and in the legal custody of the citizen parent.

a certificate of citizenship pursuant to former section 322 prior to his eighteenth birthday, nor was one adjudicated or approved prior to his eighteenth birthday. Thus, the applicant did not acquire U.S. citizenship under former section 322 of the Act.

Former section 320(a) of the Act provided, in relevant part, that:

A child born outside of the United States, one of whose parents at the time of the child's birth was an alien and the other of whose parents then was and never thereafter ceased to be a citizens of the United States, shall, if such alien parent is naturalized, become a citizen of the United States, when –

- (1) such naturalization takes place while such child is under the age of eighteen years; and
- (2) such child is residing in the United States pursuant to a lawful admission for permanent residence at the time of naturalization or thereafter and begins to reside permanently in the United States while under the age of eighteen years.

Former section 321(a) of the Act provided, in pertinent part, that:

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

....

(b) Upon approval of the application . . . [and] upon taking and subscribing before an officer of the Service within the United States to the oath of allegiance required by this chapter of an applicant for naturalization, the child shall become a citizen of the United States and shall be furnished by the Attorney General [Secretary] with a certificate of citizenship.

(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.

The applicant did not derive U.S. citizenship under former section 320 of the Act. Former section 320 of the Act provided for derivation of U.S. citizenship through the naturalization of a parent, when the other parent was a U.S. citizen at the time of the child's birth. The applicant's mother was not a U.S. citizen at the time of his birth. Thus, the applicant did not derive U.S. citizenship under former section 320 of the Act.

The applicant also did not derive U.S. citizenship under former section 321 of the Act. The applicant indicates in his Application for Certificate of Citizenship (Form N-600) that he was born out of wedlock. The Act does not provide for derivation of U.S. citizenship by a child born out of wedlock upon his father's naturalization, whether or not the applicant has met his mother and regardless of any custody agreement between the parents.² Former section 321(a)(3) of the Act allows for the derivation of U.S. citizenship by a child born out of wedlock only upon the naturalization of the mother, where the child's paternity has not been established by legitimation. *See Lewis v. Gonzales*, 481 F.3d 125, 130 (2nd Cir. 2007). The applicant's became a U.S. citizen after the applicant's eighteenth birthday. Thus, the applicant did not derive citizenship under subsections (1) or (3) of former section 321 of the Act. The applicant also did not derive U.S. citizenship under subsection (2) of former section 321 of the Act, because his mother was not deceased at the time of his father's naturalization. The applicant did not derive U.S. citizenship under former section 321 of the Act, or any other provision of law.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.

² The AAO notes that the applicant obtained lawful permanent residence on the basis of an alien relative petition filed by his mother on his behalf. The AAO further notes that the applicant's mother had previously executed a document in Haiti, purporting to cede custody of the applicant to his father.