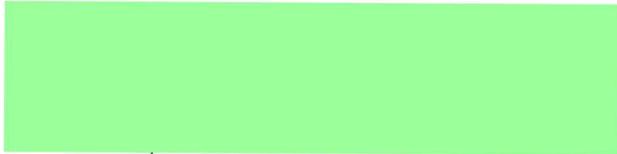




U.S. Citizenship  
and Immigration  
Services

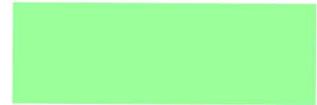
(b)(6)



JUN 13 2013

Date:

Office: BUFFALO, NY



IN RE:

Applicant:



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for Certificate of Citizenship under Former Section 321 of the Immigration and Nationality Act; 8 U.S.C. § 1432 (repealed).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

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 District Director, Buffalo, New York. 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 October 6, 1976 in St. Lucia. The applicant's parents, as reflected in his birth certificate, are [REDACTED]. The applicant's parents were married in 1973. The applicant states that his parents were divorced in 1986. The applicant's father became a U.S. citizen upon his naturalization on September 9, 1994, when the applicant was 17 years old. The applicant was admitted to the United States as a lawful permanent resident in 1989, when he was 12 years old. The applicant seeks a certificate of citizenship claiming that he automatically derived U.S. citizenship through his father.

The district director determined that the applicant did not derive U.S. citizenship under former section 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432 (1989), because he did not submit evidence that he was in his father's legal custody prior to his eighteenth birthday. The application was accordingly denied.

On appeal, the applicant maintains, in relevant part, that he was in his parents' shared legal custody since his arrival in the United States. *See* Appeal Brief.

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. The applicant's eighteenth birthday was in 1994. 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

(b)(6)

(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.

The record indicates that the applicant's U.S. citizen father naturalized and that the applicant was admitted to the United States as a lawful permanent resident prior to his eighteenth birthday. However, the applicant has not shown that his mother naturalized prior to his eighteenth birthday; he therefore cannot derive citizenship under former section 321(a)(1) of the Act. The record also indicates that the applicant's mother was not deceased prior to the applicant's eighteenth birthday, such that he could derive U.S. citizenship solely through his father under former section 321(a)(2) of the Act.

The applicant is also ineligible to derive citizenship under former section 321(a)(3) of the Act because, as discussed below, he was not in his father's legal custody following a legal separation of his parents.<sup>1</sup> Legal custody vests by virtue of "either a natural right or a court decree." See *Matter of Harris*, 15 I&N Dec. 39, 41 (BIA 1970). The record before the AAO does not contain a copy of the applicant's parents' divorce, or any court order regarding the applicant's custody. Thus, the applicant cannot establish that his parents were "legally separated" or that he was in his father's legal custody such that he could derive U.S. citizenship solely through him.

In derivative citizenship cases where there is no formal, judicial custody order, the parent having "actual, uncontested custody" will be regarded as having "legal custody" of the child. *Bagot v. Ashcroft*, 398 F.3d 252, 266-67 (3d Cir. 2005) (citing *Matter of M-*, 3 I&N Dec. 850, 856 (Cent. Office 1950)). The record before the AAO does not contain any evidence to establish that the applicant resided with or was in the custody of his father after his immigration to the United States. Accordingly, the applicant has failed to meet his burden of proof to establish that he was in the legal custody of his father, where there has been a legal separation of the parents, such that he could derive citizenship under former section 321(a)(3) of the Act.

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<sup>1</sup> The second clause of former section 321(a)(3) of the Act provides for derivation of U.S. citizenship by an out of wedlock child upon the mother's naturalization and is therefore inapplicable in this case.

“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 failed to meet his burden of proof, and his appeal will be dismissed.

**ORDER:** The appeal is dismissed.