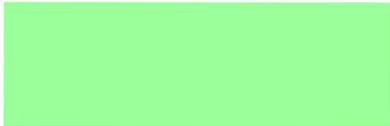




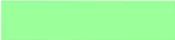
**U.S. Citizenship
and Immigration
Services**

(b)(6)



Date: **MAR 04 2013**

Office: PHILADELPHIA, PA

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Application for a Certificate of Citizenship under former Section 321(a) of the Act, 8 U.S.C. § 1432(a) (repealed).

ON BEHALF OF APPLICANT:

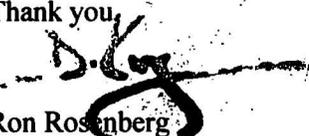
SELF-REPRESENTED

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 Field Office Director, Philadelphia, Pennsylvania. 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 [REDACTED]. The applicant was born out of wedlock. The record indicates that his mother is not a U.S. citizen. The applicant claims that his father, [REDACTED] became a U.S. citizen on August 9, 1988. The applicant was admitted to the United States as a lawful permanent resident on May 17, 1988. The applicant's eighteenth birthday was on March 27, 1987. He 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 field office director determined that the applicant could not derive U.S. citizenship under former section 321 of the Act because his parents did not naturalize, and he did not acquire lawful permanent residence, prior to his eighteenth birthday. The director further noted that the applicant was ineligible for citizenship under the amended provisions enacted by the Child Citizenship Act of 2000 (the CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000). 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 attached to Form I-290B, Notice of Appeal. The applicant claims that he is eligible for citizenship because his father submitted an application on his behalf prior to his eighteenth birthday. *Id.* Alternatively, the applicant states that he acquired U.S. citizenship pursuant to the CCA because he became a lawful permanent resident prior to its effective date. *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 CCA, 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

(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 applicant's eighteenth birthday was in 1987. The applicant did not obtain lawful permanent residence, nor did his father naturalize, prior to his eighteenth birthday. Thus, the applicant did not derive U.S. citizenship pursuant to former section 321 of the Act, which requires that all conditions for derivation be fulfilled prior to an applicant's eighteenth birthday. *Matter of Fuentes-Martinez*, 21 I&N Dec. 893, 897 (BIA 1997).

The applicant also did not derive U.S. citizenship on the basis of the application he claims was filed by his father in 1987. 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.

....

(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.

Whether or not an applicant satisfied the requirements set forth in former section 322(a) of the Act, he is required to establish that his application for citizenship was approved, and that he took the oath of allegiance, prior to his eighteenth birthday. The applicant in the present case did not meet the requirements set forth in former section 322(b) of the Act because, even if he applied for a certificate of citizenship before he turned 18, his application was not adjudicated or approved, nor did he take the oath of allegiance prior to his eighteenth birthday.

The applicant bears the burden of proof to establish his eligibility for citizenship under the Act. Section 341 of the Act, 8 U.S.C. § 1452; 8 C.F.R. § 341.2(c). Here, the applicant has not established that he met all of the conditions for derivation of U.S. citizenship pursuant to former sections 321 or 322 of the Act, or any other provision of law. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.