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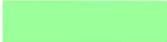
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

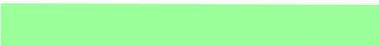


U.S. Citizenship
and Immigration
Services



Date: **MAR 18 2013** Office: NEW ORLEANS, LA

FILE: 

IN RE: 

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for Certificate of Citizenship under former section 321 of the Immigration and Nationality Act, 8 U.S.C. § 1432 (repealed)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 PETITIONER:

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.

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, New Orleans, Louisiana, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born in Mexico on January 6, 1981. The applicant claims that his parents, [REDACTED] were married in Mexico in 1978 and separated in 1981. The applicant was admitted to the United States as lawful permanent resident on September 30, 1998. The applicant's mother became a U.S. citizen upon her naturalization on February 14, 1997. The applicant's father is not a U.S. citizen. The applicant's eighteenth birthday was on January 6, 1999. He seeks a Certificate of Citizenship under former section 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432, claiming that he derived citizenship through his mother.

The field office director determined that the applicant failed to establish eligibility for derivative citizenship finding that he could not establish that his parents were "legally separated" as required by former section 321(a)(3) of the Act. The application was denied accordingly.

On appeal, the applicant contends that his parents were separated in 1981 and that he therefore could derive U.S. citizenship solely upon her naturalization. See Statement of the Applicant on Form I-290B, Notice of Appeal or Motion. The applicant requested additional time in which to submit additional documentation in support of his claim. The AAO granted an extension on time in which to supplement the record but, to date, no additional brief or evidence has been received.

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); accord *Jordon v. Attorney General*, 424 F.3d 320, 328 (3d Cir. 2005). Former section 321 of the Act was in effect at the time of the applicant's eighteenth birthday, and is therefore applicable in this case.

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

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

(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.

Here, the applicant satisfied several of the requirements for derivative citizenship set forth in former section 321(a) of the Act before his eighteenth birthday. He was admitted to the United States as a lawful permanent resident and his mother naturalized when he was under the age of 18. However, because the applicant has not shown that his father naturalized prior to his eighteenth birthday, he did not derive citizenship under former section 321(a)(1) of the Act. The record also does not indicate that the applicant's father was deceased prior to the applicant's eighteenth birthday and he is consequently ineligible to derive citizenship under former section 321(a)(2) of the Act. The applicant is also ineligible to derive citizenship solely through his mother under the second clause of former section 321(a)(3) of the Act because he was born in wedlock. At issue in this case is whether the applicant's parents were "legally separated," such that he could derive U.S. citizenship solely upon his mother's naturalization under the first clause of former section 321(a)(3) of the Act.

The term legal separation means "either a limited or absolute divorce obtained through judicial proceedings." *Afeta v. Gonzales*, 467 F.3d 402, 406 (4th Cir. 2006) (affirming the Board of Immigration Appeals' construction of the term legal separation as set forth in *Matter of H*, 3 I&N Dec. 742, 744 (BIA 1949)) (internal quotation marks omitted). A married couple, even when living apart with no plans of reconciliation, is not legally separated. *Matter of Mowrer*, 17 I&N Dec. 613, 615 (BIA 1981); *see also Nehme v. INS*, 252 F.3d 415 (5th Cir. 2001). The record reflects that the applicant's parents were married in 1978 and never obtained a divorce. The applicant contends that his parents were separated in 1981, and that he has not seen his father since. The record, however, does not contain any evidence that the applicant's parents were formally or officially separated in 1981 or at any time prior to the applicant's eighteenth birthday. The applicant's parents remained married, and not "legally separated," for purposes of derivative citizenship under former section 321 of the Act. Consequently, the applicant did not derive citizenship upon his mother's naturalization under former section 321(a)(3) of the Act.

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 the automatic derivation of U.S. citizenship pursuant to former section 321 of the Act before his eighteenth birthday. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.