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

(b)(6)

[redacted]

Date: OCT 10 2013 Office: HOUSTON, TX FILE: [redacted]

IN RE: Applicant: [redacted]

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for Certificate of Citizenship under former Section 321 of the Immigration and Nationality Act; 8 U.S.C. § 1432 (repealed).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

[redacted]

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,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The appeal was denied by the Field Office Director, Houston, Texas, and 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 El Salvador on February 10, 1983. The applicant's parents were never married to each other. The applicant was admitted to the United States as lawful permanent resident on May 26, 1996. The applicant's father became a U.S. citizen upon his naturalization on March 23, 1995. The applicant's mother is not a U.S. citizen. The applicant seeks a certificate of citizenship claiming that he derived citizenship through his father.

The field office director determined that the applicant failed to establish eligibility for derivative citizenship under former section 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432. The director noted further that the applicant was not eligible for the benefits of the Child Citizenship Act of 2000 (the CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), because he was over the age of 18 on its effective date (February 27, 2001).

On appeal, the applicant, through counsel, contends that he was legitimated by his father and therefore derived U.S. citizenship upon his naturalization under former section 321 of the Act. Alternatively, counsel states that although the applicant is ineligible for U.S. citizenship pursuant to the CCA, denial of his application violates the spirit of the law. *See* Statement of the Applicant on Form I-290B, Notice of Appeal or Motion. Counsel indicates that a brief or additional evidence will be submitted within 30 days, but no such brief or evidence has been received by this office to date. The record is deemed complete and ready for adjudication.

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). The CCA, which repealed former section 321 of the Act, and amended sections 320 and 322 of the Act, is not retroactive and applies only to individuals who were under the age of 18 on its effective date, February 27, 2001. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153, 156 (BIA 2001) (en banc). The applicant was over the age of 18 on the effective date of the CCA and is therefore ineligible for the benefits of the amended Act. Former section 321 of the Act, was in effect prior to 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. Specifically, prior to the applicant's eighteenth birthday, he was admitted to the United States as a lawful permanent resident and his father naturalized. However, the applicant's mother is not a U.S. citizen. Thus, the applicant did not derive U.S. citizenship under former section 321(a)(1) of the Act, which requires the naturalization of both parents. The record also does not indicate that the applicant's mother was deceased prior to the applicant's eighteenth birthday and he is consequently ineligible to derive U.S. citizenship from his father alone under former section 321(a)(2) of the Act. The applicant is also ineligible to derive citizenship through his father under the first clause of former section 321(a)(3) of the Act because his parents were never married, and therefore never "legally separated." 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. *See Lewis v. Gonzales*, 481 F.3d 125, 130 (2nd Cir. 2007). Consequently, the applicant did not derive citizenship upon his father's naturalization under former section 321(a) of the Act, or any other provision of law.

Counsel maintains that denial of the applicant's citizenship claim contravenes the CCA's spirit and purpose. It is well-established, however, that the CCA is not retroactive and applies only to individuals who were under the age of 18 on its effective date, February 27, 2001. *See Matter of Rodriguez-Tejedor, supra*. The applicant was over the age of 18 on February 27, 2001 and the CCA is not applicable to his case. A person may only obtain citizenship in strict compliance with the statutory requirements imposed by Congress. *INS v. Pangilinan*, 486 U.S. 875, 885 (1988). U.S. citizenship may not be obtained on the basis of an argument relating to the law's spirit or purpose. Rather, "[t]here 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). Any doubts concerning citizenship are to be resolved in favor of the United States. *Pangilinan, supra,* at 883-84; *see also United States v. Manzi*, 276 U.S. 463, 467 (1928) (stating that "citizenship is a high privilege, and when doubts exist concerning a grant of it … they should be resolved in favor of the United States and against the claimant"). Moreover, "it has been universally accepted that the burden is on the alien applicant to show his eligibility for citizenship in every respect." *Berenyi v. District Director, INS*, 385 U.S. 630, 637 (1967).

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.