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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

[Redacted]

DATE: **SEP 05 2013**

OFFICE: LAS VEGAS, NV

FILE: [Redacted]  
(Consolidated therein:  
[Redacted] and [Redacted])

IN RE:

[Redacted]

APPLICATION: Application for Certificate of Citizenship under Sections 301 and 321 of the former Immigration and Nationality Act, 8 U.S.C. §§ 1401 and 1432

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 Form N-600, Application for Certificate of Citizenship (Form N-600) was denied by the Field Office Director, Las Vegas, Nevada (the director), and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant filed the Form N-600 on February 3, 2012, based on the claim that he derived U.S. citizenship through his adoptive parent. In a decision dated February 15, 2013, the director determined that the applicant had failed to establish that he met requirements for citizenship under sections 301 or 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1401 and 1431, because he was not born to a U.S. citizen parent and he was not lawfully admitted into the United States for permanent residence. The application was denied accordingly.

Through counsel, the applicant asserts on appeal that he was born in Mexico on November 7, 1967; he was adopted by his U.S. citizen stepfather on July 27, 1982; his biological mother became a naturalized U.S. citizen on June 20, 1985; and he obtained section 201(b) of the Act, 8 U.S.C. § 1151(b), immigrant visa classification under a different alien number on June 25, 1985. Counsel states on the Form I-290B notice of appeal that a brief and/or additional evidence will be submitted to the AAO within 30 days; however, no brief or evidence has been received. Previously submitted evidence consists of the applicant's birth certificate; his mother and stepfather's marriage certificate; his stepfather's U.S. passport; and an adoption decree reflecting that the applicant was adopted by his stepfather in July 1982.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

“[T]he applicable law for transmitting citizenship to a child born abroad when one parent is a U.S. citizen is the statute that was in effect at the time of the child's birth.” See *Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1029 (9<sup>th</sup> Cir. 2000). (Citations omitted). The applicant was born in Mexico on November 7, 1967. Section 301(a)(7) of the former Immigration and Nationality Act (the former Act), 8 U.S.C. § 1401(a)(7) therefore applies to his acquisition of citizenship at birth claim.

Section 301(a)(7) of the former Act states in pertinent part that:

The following shall be nationals and citizens of the United States at birth: . . . a person born outside the geographical limits of the United States . . . of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States . . . for a period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years.

The statutory language contained in section 301 of the Act, “[r]equires that the child be born of a United States citizen. There is no indication that this section applies to an adopted child.” *Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153, 155 (BIA 2001). In the present matter, the record reflects that the applicant's biological father was not a U.S. citizen and his mother became a naturalized U.S. citizen in June 1985, when the applicant was 17 years old. Because neither of the applicant's

biological parents were U.S. citizens at the time of the applicant's birth, section 301(a)(7) of the Act provisions are not applicable to the applicant's citizenship claim.

The provisions contained in section 320 of the Act are also not applicable to the applicant's claim for citizenship. Former section 320 of the Act was amended by the Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631 (CCA), and took effect on February 27, 2001.<sup>1</sup> The CCA benefits all persons who did not reach their eighteenth birthday as of February 27, 2001. See *Matter of Rodriguez-Tejedor, supra*. The applicant was 33 years old on February 27, 2001. Section 320 of the Act provisions therefore do not apply to his citizenship claim.

It is noted that the CCA repealed section 321 of the former Act, 8 U.S.C. § 1432; nevertheless, all persons who acquired citizenship automatically under section 321 of the former Act, as previously in force prior to February 27, 2001, may apply for a certificate of citizenship at any time. *Matter of Rodriguez-Tejedor, supra*.

Section 321 of the former Act, 8 U.S.C. § 1432 provided 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
- (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-

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<sup>1</sup> Section 320 of the Act provides that:

(a) A child born outside of the United States automatically becomes a citizen of the United States when all of the following conditions have been fulfilled:

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

(b) Subsection (a) shall apply to a child adopted by a United States citizen parent if the child satisfies the requirements applicable to adopted children under section 101(b)(1).

(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 (2) or (3) of this subsection, or thereafter begins to reside permanently in the United States while under the age of 18 years.

(b) Subsection (a) of this section shall apply to an adopted child only if the child is residing in the United States at the time of naturalization of such adoptive parents or parents, in the custody of his adoptive parent or parents, pursuant to a lawful admission for permanent residence.

Although counsel indicates on appeal that the applicant obtained lawful permanent resident status in the United States on June 25, 1985 under another alien number, the record lacks any evidence to corroborate this assertion. The conditions set forth in section 321(b) and 321(a)(5) of the former Act have therefore not been met. The record also fails to establish that both of the applicant's parents became naturalized U.S. citizens, that his father is deceased, that his mother legally separated from his father, or that the applicant was not legitimated. The conditions set forth in section 321(a)(1) through (3) of the former Act have thus also not been met. Accordingly, the applicant does not qualify for citizenship under section 321 of the former Act.

The regulation provides at 8 C.F.R. § 341.2(c), that the burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. The applicant has failed to meet his burden in the present matter. The appeal will therefore be dismissed.

**ORDER:** The appeal is dismissed.