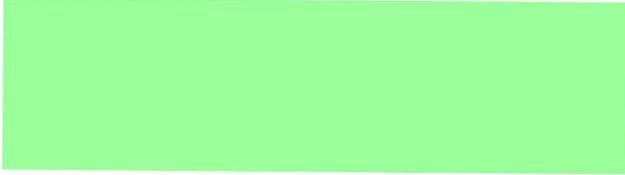




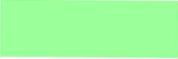
U.S. Citizenship  
and Immigration  
Services

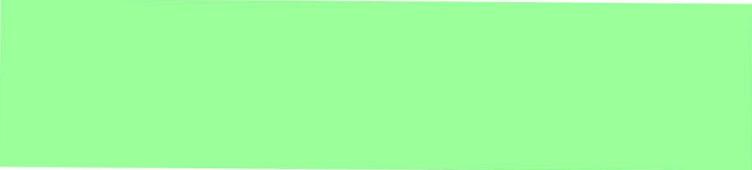
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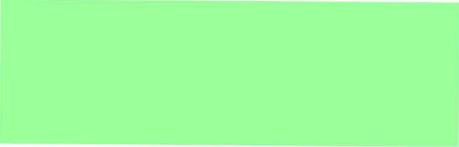
DATE: **APR 16 2014**

OFFICE: NEW YORK, NY

FILE: 

IN RE: 

APPLICATION: Application for Certificate of Citizenship under former Section 322 of the Immigration and Nationality Act, 8 U.S.C. § 1433 (1982)

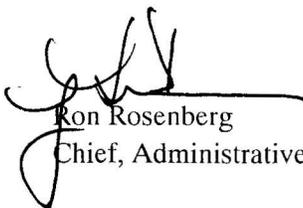
ON BEHALF OF APPLICANT:  


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

*Pertinent Facts and Procedural History*

The applicant was born in the Dominican Republic on December 30, 1982. He was adopted in the Dominican Republic on April 3, 1987, when he was four years old. The applicant's adoptive mother became a naturalized U.S. citizen on April 11, 1997, when the applicant was 14 years old. His adoptive father, deceased since April 17, 2006, was not a U.S. citizen. The applicant was admitted into the United States as a Lawful Permanent Resident on May 8, 2000, when he was 17 years old. He seeks a certificate of citizenship pursuant to former section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433, based on the claim that he derived U.S. citizenship through his adoptive mother.

In a decision dated July 13, 2013, the director determined that the applicant failed to establish that his Form N-600 was approved, or that he took an oath of allegiance, prior to his 18<sup>th</sup> birthday. He therefore failed to meet requirements for derivative citizenship under former section 322(b) of the Act. The director determined further that the applicant did not qualify for derivative citizenship under former section 321 of the Act, 8 U.S.C. § 1432, or under section 320 of the Act, as amended, 8 U.S.C. § 1431. The Form N-600 was denied accordingly.

Through counsel, the applicant asserts on appeal that he meets the requirements set forth in former section 322(a)(1) through (5) of the Act; that former section 322 of the Act does not require him to apply for a certificate of citizenship prior to his 18<sup>th</sup> birthday; and that he therefore qualifies for U.S. citizenship under former section 322 of the Act. The applicant does not contest the director's finding that he is ineligible for derivative U.S. citizenship under former section 321 of the Act, and under section 320 of the Act, as amended.

*Applicable Law*

The AAO reviews these proceedings *de novo*. 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.

The applicable law for derivative citizenship purposes is "the law in effect at the time the critical events giving rise to eligibility occurred." See *Minasyan v. Gonzales*, 401 F.3d 1069, 1075 (9<sup>th</sup> Cir. 2005). The provisions contained in former section 322 of the Act apply to the applicant's U.S. citizenship claim. Former section 322 of the Act, in effect prior to amendment by the Child Citizenship Act of 2000 (the CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), stated, in pertinent part:

- (a) Application of citizen parents; requirements

A parent who is a citizen of the United States may apply to [Secretary, Department of Homeland Security, (Secretary)] for a certificate of citizenship on behalf of a child born outside the United States. The [Secretary] shall issue such a certificate of citizenship upon proof to the satisfaction of the [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.
- (4) If the citizen parent is an adoptive parent of the child, the child was adopted by the citizen parent before the child reached the age of 16 years and the child meets the requirements for being a child under subparagraph (e) or (F) of section 101(b)(1).
- (5) If the citizen parent has not been physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years –
  - (A) the child is residing permanently in the United States with the citizen parent, pursuant to a lawful admission for permanent residence, or
  - (B) a citizen parent of the citizen parent has been physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years.

(b) Attainment of citizenship status; receipt of certificate

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 [Secretary] with a certificate of citizenship.

(c) Adopted Children

Subsection (a) of this section shall apply to the adopted child of a United States citizen adoptive parent if the conditions specified in such subsection have been fulfilled.

The requirements for citizenship, as set forth in the Act, are statutorily mandated by Congress. USCIS lacks any authority to issue a certificate of citizenship when an applicant fails to meet the required statutory provisions set forth in the Act. *See generally, Iddir v. INS*, 301 F.3d 492 (7<sup>th</sup> Cir. 2002).

Referring to Volume 7 of the U.S. Department of State (DOS), Foreign Affairs Manual (7 FAM) section 1153(f), the applicant asserts that only the provisions contained in former section 322(a) of the Act must be met in order to derive citizenship under former section 322 of the Act. The applicant asserts further that an applicant or his or her parent need not even apply for a certificate of citizenship on behalf of the child under former section 322 of the Act; and that “a person who claims citizenship through the naturalization of a parent . . . can apply for either a passport or a Certificate of Citizenship at any time because their cases are not naturalization cases.” *See Appeal Brief from Counsel, dated August 3, 2013.*

Counsel’s reliance on the FAM is misplaced, as the FAM governs U.S. citizenship claims made before a DOS consular officer by individuals physically present outside of the United States. *See* Section 104(a) of the Act, 8 U.S.C. § 1104(a) (providing, in pertinent part, that the “Secretary of State shall be charged with the administration and the enforcement of the provisions of this Act and all other immigration and nationality laws relating to . . . (3) the determination of nationality of a person not in the United States”); *see also* 22 C.F.R. § 50.2 (providing that DOS “[s]hall determine claims to United States nationality when made by persons abroad on the basis of an application for registration, for a passport, or for a Consular Report of Birth Abroad of a Citizen of the United States of America . . .”).

Former section 322 of the Act and the regulations promulgated therein required the child to be under the age of 18 both at the time of application for a certificate of citizenship and at the time of admission to U.S. citizenship. *In Re Rodriguez-Tejedor*, 23 I&N Dec. 153, 155 (BIA 2001). The regulation at 8 C.F.R. § 341.2(c) provides that the burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. In the present case, the applicant submitted his Form N-600 to U.S. Citizenship and Immigration Services (USCIS) when he was 29 years old, so he was unable to take an oath of allegiance prior to his 18<sup>th</sup> birthday. The applicant therefore failed to satisfy the requirements set forth in former section 322(b) of the Act. Where, as here, the applicant has failed to establish statutory eligibility for U.S. citizenship, a certificate of citizenship cannot be issued. *See Fedorenko v. U.S.*, 449 U.S. 490, 506 (1981) (stating that strict compliance with statutory prerequisites is required to acquire citizenship.)

(b)(6)

*NON-PRECEDENT DECISION*

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*Conclusion*

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. The appeal will therefore be dismissed.

**ORDER:** The appeal is dismissed.