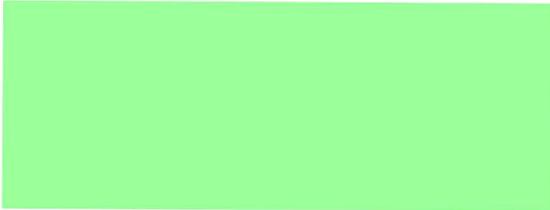


(b)(6)

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: Office: NEW YORK, NY FILE:

FEB 06 2014

IN RE: Applicant:

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for Certificate of Citizenship under Former Section 321 of the Immigration and Nationality Act, 8 U.S.C. § 1432 (repealed).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

SELF-REPRESENTED

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 New York, New York Field Office Director (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 and the application will remain denied.

Pertinent Facts and Procedural History

The applicant was born on July 20, 1979 in Honduras to [REDACTED] and [REDACTED]. The record indicates that the applicant's parents were married sometime after his birth. The applicant was admitted to the United States as a lawful permanent resident on December 22, 1986 when he was seven years old. The applicant's father became a naturalized U.S. citizen on July 25, 1996, when the applicant was seventeen years old. His mother naturalized on May 28, 1999 when the applicant was nineteen years old. The applicant seeks a certificate of citizenship, on the basis that he derived U.S. citizenship through both his parents under former section 321(a)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432(a)(1) (repealed).

The director denied the Form N-600 after concluding that the applicant did not derive U.S. citizenship under former section 321(a)(1) of the Act because both of his parents had not naturalized before the applicant's eighteenth birthday, as required by statute. On appeal, the applicant contends that he meets the requirements for derivative citizenship based on the naturalization of both parents and that he should not be penalized for the unreasonable delay in the adjudication of his mother's application for naturalization which had been filed when the applicant was sixteen years old.

Applicable Law

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Because the applicant was born abroad, he is presumed to be an alien and bears the burden of establishing his claim to U.S. citizenship by a preponderance of credible evidence. *See Matter of Baires-Larios*, 24 I&N Dec. 467, 468 (BIA 2008).

The applicable law for derivative citizenship purposes is that in effect at the time the critical events giving rise to eligibility occurred. *See 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 Child Citizenship Act of 2000 (CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), effective as of February 27, 2001, repealed section 321 of the Act. The provisions of the CCA are not retroactive and thus, the amended provisions of sections 320 and 322 of the Act apply only to persons who were not yet eighteen years of age on February 27, 2001. The applicant was over the age of eighteen on the effective date of the CCA and thus, cannot benefit from the amended Act. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). Accordingly, former section 321 of the Act is applicable in this case.

Former section 321 of the Act provided that:

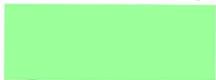
- (a) A child born outside of the United States of alien parents, or of an alien parent and a citizen parent who has subsequently lost citizenship of the United States, becomes a citizen of the United States upon fulfillment of the following conditions:

- (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-
- (4) Such naturalization takes place while such 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 record shows that the applicant has satisfied several of the requirements for derivative citizenship set forth in former section 321(a)(1) of the Act. Specifically, both of the applicant's parents are naturalized U.S. citizens and the applicant was residing in the United States pursuant to a lawful admission for permanent residence at the time of his parents' naturalizations. However, the applicant's mother naturalized only after the applicant's eighteenth birthday. Accordingly, the applicant has failed to demonstrate that he derived citizenship through his parents under former section 321(a)(1) of the Act, because he was not under the age of eighteen when both of his parents naturalized.

The applicant is also ineligible to derive citizenship under any other subsection of former section 321(a) of the Act. He cannot derive citizenship under former section 321(a)(2) of the Act, because the applicant's U.S. citizen father was not his sole surviving parent at the time his father naturalized prior to the applicant's eighteenth birthday. The applicant is also ineligible to derive citizenship under former section 321(a)(3) of the Act because there is no evidence that his parents were legally separated prior to the applicant's eighteenth birthday, and because, although the applicant was born out of wedlock, he was legitimated.

On appeal, the applicant asserts that his claim of derivative citizenship should not be denied under principles of estoppel because the legacy Immigration and Naturalization Service's (now United States Citizenship and Immigration Services) unreasonable two-year delay in adjudicating his mother's naturalization application is the sole reason for the applicant's ineligibility under former section 321(a)(1) of the Act. However, the jurisdiction of the AAO is limited to the authority specifically granted through the regulations at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on Feb. 28, 2003) and subsequent amendments. Such claims based on estoppel go beyond the purview of this administrative appeal and are outside the jurisdiction of this office.



Accordingly, the applicant has not satisfied his burden to demonstrate that he derived citizenship through his U.S. citizen parents under former section 321 of the Act.

Conclusion

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 and the application remains denied.