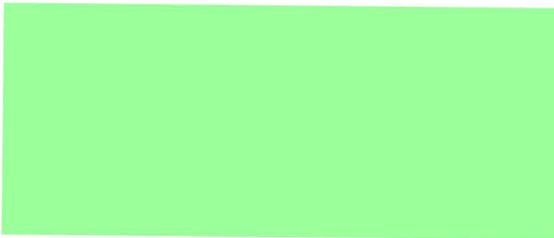


(b)(6)

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



Date: **JUN 02 2014**

Office: PHILADELPHIA, PA

FILE: 

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for Certificate of Citizenship under Former Section 321 of the Immigration and Nationality Act; 8 U.S.C. § 1432 (repealed).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



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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, Philadelphia, Pennsylvania (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 record reflects that the applicant was born in St. Kitts on March 28, 1976. The applicant's father, [REDACTED] became a U.S. citizen upon his naturalization on December 18, 1989, when the applicant was thirteen years old. The applicant was admitted to the United States as a lawful permanent resident on August 25, 1995, when he was 19 years old. The applicant 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 father.

The director determined that the applicant was over the age of 18 years when he was admitted to the United States as a lawful permanent resident and therefore did not establish eligibility for derivative citizenship under former section 321 of the Act. The application was denied accordingly.

On appeal, the applicant, through counsel, contends that lawful permanent residence is not a requirement for derivation of U.S. citizenship and that he can benefit from the amendments of the Child Citizenship Act of 2000 (CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000). See Statement of the Applicant on Form I-290B, Notice of Appeal or Motion. The appeal is accompanied by a brief outlining the legislative history of the CCA. Counsel states that the applicant is not required to establish that he was admitted to the United States as a lawful permanent resident. See Appeal Brief.

#### *Applicable Law*

The AAO reviews these proceedings *de novo*. 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. *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 father's naturalization and prior to the applicant's eighteenth birthday, and is applicable in this case.

Contrary to counsel's claim, the CCA, which took effect on February 27, 2001 and repealed former section 321 of the Act, is not retroactive and does not apply to the applicant's case. The CCA benefits only those individuals who had not yet reached their eighteenth birthdays as of February 27, 2001. See *Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001).

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.

#### *Analysis*

Former section 321(a)(5) of the Act requires that the applicant be admitted to the United States as a lawful permanent resident prior to his eighteenth birthday. *See Romero-Ruiz v. Mukasey*, 538 F.3d 1057 (9<sup>th</sup> Cir. 2008) (holding that former section 321(a)(5) requires admission as a lawful permanent resident of the United States while under the age of 18); *accord United States v. Forey-Quintero*, 626 F.3d 1323, 1326-27 (11<sup>th</sup> Cir. 2010). The applicant obtained lawful permanent residence on August 25, 1995, when he was 19 years old. The applicant therefore cannot establish that he was admitted to the United States as a lawful permanent resident prior to his eighteenth birthday, and did not derive U.S. citizenship under former section 321(a) of the Act.

Beyond the director's decision, the AAO finds that the applicant is also ineligible for a certificate of citizenship because he is not currently present in the United States.<sup>1</sup>

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<sup>1</sup> An application that fails to comply with the technical requirements of the law may be denied by the AAO even if the director did not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003).

Section 341(a) of the Act, 8 U.S.C. § 1452, provides that a person who claims to have derived U.S. citizenship through a qualifying relative may apply to the Attorney General (now the Secretary, Department of Homeland Security) for a certificate of citizenship, and that a certificate may be furnished by the Attorney General if such individual is at the time within the United States. The record, including the Form N-600 and the Forms G-28, Notice of Entry of Appearance as Attorney or Representative, clearly establish that when the applicant filed his Form N-600 with U.S. Citizenship and Immigration Services (USCIS) he was physically present and residing outside of the United States in St. Kitts.

A citizenship claim made by an individual physically present outside of the United States is only properly made before the U.S. Department of State (DOS) through a consular officer. *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 . . .”).

As the record demonstrates that the applicant is physically present in St. Kitts, jurisdiction to adjudicate his claim to U.S. citizenship lies within the U.S. Department of State, and not USCIS.

### ***Conclusion***

It is the applicant's burden to establish eligibility for the immigration benefit sought. *See* Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 341.2(c). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.