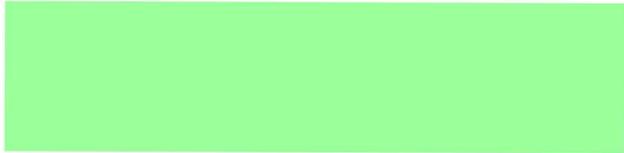




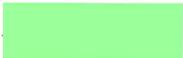
U.S. Citizenship
and Immigration
Services

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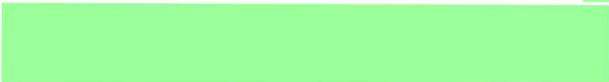


Date: **MAY 01 2014**

Office: BOSTON, MA

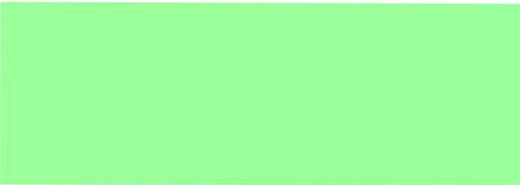
FILE: 

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for Certificate of Citizenship under former Section 321 of the Immigration and Nationality Act; 8 U.S.C. § 1432 (repealed).

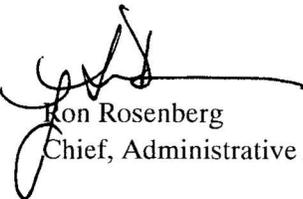
ON BEHALF OF APPLICANT:



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.

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director of the Boston, Massachusetts Field Office (the director) denied the Application for Citizenship (Form N-600) and matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the matter returned to the director for issuance of a certificate of citizenship to the applicant.

Pertinent Facts and Procedural History

The applicant was born in Cape Verde on August 6, 1982. His parents, [REDACTED] and [REDACTED], were married in 1977 and divorced in 1986. The applicant's parents remarried each other in 1997. The applicant's father became a U.S. citizen upon his naturalization on September 18, 1992. The applicant's mother naturalized in 2003, after the applicant's eighteenth birthday. The applicant seeks a certificate of citizenship under former section 321(a) of the Act, 8 U.S.C. § 1432, claiming that he derived U.S. citizenship upon his father's naturalization.

The director denied the application, determining that the applicant was ineligible for citizenship through his father because he parents were married and his mother naturalized after the applicant turned eighteen. The director noted that the applicant submitted no evidence that he was in his father's legal custody pursuant to a legal separation of the applicant's parents.

Applicable Law

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 "the law 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). The Child Citizenship Act of 2000 (the CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), which took effect on February 27, 2001, amended sections 320 and 322 of the Act, and repealed section 321 of the Act. The provisions of the CCA are not retroactive, and the amended provisions of section 320 and 322 of the Act apply only to persons who were not yet 18 years old as of February 27, 2001. Because the applicant was over the age of 18 on February 27, 2001, he is not eligible for the benefits of the amended Act. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). Former section 321 of the Act, 8 U.S.C. § 1432, was the law 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.

Analysis

At issue in this case is whether the applicant derived U.S. citizenship from his father under former section 321(a)(3) of the Act prior to the applicants' parents' remarriage in 1997. As noted earlier in this decision, the applicant's parents divorced in 1986 at which time his father was given legal custody of the applicant. The applicant's father subsequently naturalized in 1992 and his parents then remarried each other in 1997.

The acquisition of citizenship occurs by operation of law and not adjudication, but "the actual determination" occurs after the fact. *Matter of Fuentes-Martinez*, 21 I&N Dec. 893 (BIA 1997). On September 18, 1992, the date of his father's naturalization, the applicant was: a lawfully admitted permanent resident; under the age of eighteen; and in the legal custody of his father following his parents' divorce in 1986. Although the applicant's parents remarried each other in 1997, the applicant met the last condition for deriving U.S. citizenship from his father prior to their remarriage. He, therefore, fulfilled all conditions in former section 321(a) of the Act and became a U.S citizen upon the naturalization of his father.

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 been met.

ORDER: The appeal is sustained. The matter is returned to the Boston Field Office for issuance of a certificate of citizenship to the applicant.