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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**

**JUN 12 2015**

DATE:

FILE: [REDACTED]

APPLICATION RECEIPT #: [REDACTED]

IN RE: Applicant: [REDACTED]

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

ON BEHALF OF APPLICANT:

NO REPRESENTATIVE OF RECORD

INSTRUCTIONS:

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page ([www.uscis.gov/i-290b](http://www.uscis.gov/i-290b)) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

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

Ron Rosenberg  
Chief, Administrative Appeals Office

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

The record reflects that the applicant was born in Jamaica on [REDACTED] On [REDACTED] a married couple – a U.S. citizen mother and a Jamaican citizen father -- adopted the applicant in Jamaica. On March 11, 1989, the applicant became a lawful permanent resident (LPR) upon admission into the United States. 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 automatically through his adoptive parents.

The director determined that the applicant was not eligible for citizenship under any provision of the Act, and denied the application accordingly. The director found that, because the applicant was adopted in Jamaica, he was ineligible for a certificate of citizenship under former section 321 of the Act as he did not meet the applicable definition of child for purposes of naturalization in section 101(c) of the Act. The director also found the applicant ineligible for automatic acquisition of citizenship under section 320 of the Act, as he was over 18 years of age on February 27, 2001, the effective date of the Child Citizenship Act of 2001 (CCA). See *Decision of the Field Office Director*, March 25, 2015.

On appeal, the applicant asserts that he meets the requirements for derivative citizenship under former section 321 of the Act through his U.S. citizen parents, maintains the applicable definition of “child” to be that in section 101(b)(1), and thus alternatively claims that he naturalized automatically under former section 320.<sup>1</sup>

We conduct 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).

Until enactment of the CCA, Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), the Act contained no provision for the automatic derivation of citizenship by the foreign-born adopted children of U.S. citizens upon their admission into the country as lawful permanent residents. See *Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153, 155 (BIA 2001); *Colaiani v. INS*, 490 F.3d 185, 187 (2nd Cir. 2007); *Marquez-Marquez v. Gonzales*, 455 F.3d 548, 556-7 (5<sup>th</sup> Cir. 2006) (holding that as former § 301(a)(3) of the Act refers to persons “born ... of parents both of whom are citizens of the United States,” it pertains only to the acquisition of citizenship at birth and does not provide for citizenship to be acquired as a result of adoption). We note that current sections 320 and 321 of the Act, as amended by the CCA, are inapplicable to this case because the applicant was over 18 years old on the effective date of the CCA. See *Matter of Rodriguez-Tejedor*, *supra*, at 162. As the applicant was too old for the CCA to apply, former section 321 is the provision applicable to his citizenship claim.

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<sup>1</sup> Although under current section 320 the definition of child in section 101(b)(1) applies to adopted children, the applicant is ineligible for acquisition of citizenship under section 320, as he was over 18 on the CCA’s effective date.



Former section 321 of the Act provides, in pertinent part and with emphases added:

(a) 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.

(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 parent or parents, in the custody of his adoptive parent or parents*, pursuant to a lawful admission for permanent residence.

The applicant asserts that his adoption outside the United States is sufficient to meet the definition of child and thus meets the requirement of former section 321 of the Act in order to be eligible for a certificate of citizenship under that provision. However, even were he to be considered a “child,” he cannot meet the requirements to derive citizenship, as his mother naturalized on March 11, 1982, before he was residing in the United States, and his father naturalized on May 12, 1999, when he was over 18. Further, section 321 does not confer citizenship except upon the naturalization of a parent while the adopted child is residing in the custody of his adopted parents. His mother had naturalized before adopting him and his father naturalized when the applicant was 22 years old and confined to a correctional facility.

As former section 321 of the Act does not provide for derivation of U.S. citizenship other than upon the naturalization of a parent, it is unavailable to an applicant one of whose adoptive parents was a U.S. citizen before the adoption and the other whose naturalization came after the applicant turned 18. Thus, the applicant did not derive U.S. citizenship automatically under former section 321.

The applicant also claims to have derived citizenship under former section 320 of the Act. Former section 320 of the Act provides, in pertinent part and with emphases added:

(a) A child born outside of the United States, *one of whose parents at the time of the child's birth was an alien and the other of whose parents then was and never ceased to be a citizen of the United States*, shall, if such alien parent is naturalized, become a citizen of the United States, when—

(1) such naturalization takes place while such child is under the age of eighteen 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 parent*, in the custody of his adoptive parents, pursuant to a lawful admission for permanent residence.

The applicant does not meet the requirements of former section 320, as neither of his adoptive parents were U.S. citizens at the time of his birth. The record reflects that his mother naturalized in 1982 and his father in 1999, both becoming U.S. citizens after the applicant's birth in 1976. Further, he was not residing in the United States pursuant to a lawful admission for permanent residence in the custody of his adoptive parents at the time either of adoptive parents naturalized.

It is the applicant's burden to establish the claimed citizenship by a preponderance of the evidence. Section 341(a) of the Act, 8 U.S.C. § 1452(a); 8 C.F.R. § 341.2(c). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.