U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Admin strative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

DATE: MAY 15 2015 Office: HELENA, MONTANA 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

ON BEHALF OF PETITIONER:

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 Application for Certificate of Citizenship (Form N-600) was denied by the Field Office Director, Helena, Montana, 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 Germany on [redacted] On [redacted] 1961, two U.S. citizens – a married couple -- adopted the applicant in Germany. On [redacted] 1962, the applicant became a lawful permanent resident upon admission in the custody of her adoptive parents. 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 she derived citizenship automatically through her 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 also noted that, because the applicant's parents failed to petition for naturalization on her behalf before she turned 18, she could not receive a certificate of citizenship under former section 323 of the Act, repealed by Sec. 7, Act of Oct. 5, 1978, Pub. L. No. 95-117, 92 Stat. 917. *See Decision of the Field Office Director*, March 19, 2014.

On appeal, the applicant asserts that section 323 is inapplicable and contends that she meets the requirements for derivative citizenship under former section 321 of the Act through the naturalization of a parent. She maintains that citizenship was automatic and without the need for filing an application prior to her eighteenth birthday.

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, she is presumed to be an alien and bears the burden of establishing her 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 applicant asserts that she gained U.S. citizenship automatically, by operation of law under former section 321 of the Act, and therefore no petition or application on her behalf was required. However, as the applicant's adoptive parents were U.S. citizens at birth, she is ineligible for citizenship under this provision. Section 321 does not confer citizenship except upon the naturalization of a parent.

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
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> (2) The *naturalization* of the surviving parent if one of the parents is deceased; or
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> (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.

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 whose adoptive parents were U.S. citizens at birth. Thus, the applicant did not derive U.S. citizenship automatically under former section 321.[1]

We note that the field office director determined that the applicant did not satisfy the requirements of former section 323 of the Act because her adoptive parents filed no petition for her naturalization prior to her eighteenth birthday. Former section 323 of the Act, now repealed, was a provision that allowed for an adoptive parent to petition for the naturalization of his or her adopted child. The applicant does not claim and there is no indication on the record that she was naturalized before reaching the age of eighteen upon the petition of her adoptive parents.

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.

[1] Until enactment of the Child Citizenship Act of 2000 (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); *Colaianni v. INS,* 490 F.3d 185, 187 (2nd Cir 2007); *Marquez-Marquez v. Gonzales,* 455 F.3d 548, 556-7 (5th 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 section 320 of the Act, 8 U.S.C. § 1431, as amended by the CCA, is 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.