



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF A-E-G-

DATE: JULY 11, 2016

APPEAL OF LOS ANGELES, CALIFORNIA FIELD OFFICE DECISION

APPLICATION: FORM N-600, APPLICATION FOR CERTIFICATE OF CITIZENSHIP

The Applicant, a native and citizen of the Philippines, seeks a Certificate of Citizenship. *See* Immigration and Nationality Act (the Act) section 321, 8 U.S.C. § 1432, *repealed by* Sec. 103(a), title I, Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631 (2000). An individual born outside the United States who acquired U.S. citizenship at birth, or who automatically derived U.S. citizenship after birth but before the age of 18, may apply to receive a Certificate of Citizenship. To establish derivative citizenship under former section 321 of the Act, an individual who was born to foreign national parents between December 24, 1952, and February 27, 1983, must show that he or she is residing in the United States as a lawful permanent resident, and that both his or her parents became naturalized U.S. citizens before the individual turned 18. For individuals born to foreign national parents, only one of whom naturalized before the individual turned 18, the individual may become a U.S. citizen if one of three conditions is met. That individual's non-naturalized parent is deceased, the U.S. citizen parent has custody over the individual after a legal separation or divorce, or, if the individual was born to unmarried parents and is claiming to be a U.S. citizen through a naturalized mother, the father must not have made the individual his legitimate child.

The Field Office Director, Los Angeles, California, denied the application. The Director concluded that the Applicant did not establish derivative U.S. citizenship under former section 321 of the Act because he did not demonstrate that both parents naturalized before the Applicant's 18th birthday. The Director also found that the Applicant did not derive citizenship pursuant to section 320 of the Act, 8 U.S.C. § 1431, because he was over 18 when the law went into effect on February 27, 2001.

The matter is now before us on appeal. In the appeal, the Applicant does not contest that he does not meet the requirements for derivative citizenship through naturalization of both parents under former section 321 of the Act. Nevertheless, the Applicant asserts that the Director's decision was in error, and indicates that he had satisfied all the requirements of former section 321(a)(3) of the Act to derive citizenship solely from his U.S. citizen father.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

The record reflects the Applicant was born in the Philippines on [REDACTED], to unmarried parents. The Applicant's father became a U.S. citizen through naturalization on December 11, 1986. The Applicant was admitted to the United States as a lawful permanent resident on August 21, 1989, based on an approved Form I-130, Petition for Alien Relative, filed on his behalf by his father. The Applicant's mother became a naturalized U.S. citizen on October 25, 1996. The Applicant's parents married on [REDACTED] 2015. The Applicant seeks a Certificate of Citizenship indicating that he derived U.S. citizenship through his father under former section 321 of the Act.

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 Applicant turned 18 on [REDACTED] when former section 321 of the Act was in effect. 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, repealed section 321 of the Act and amended sections 320 and 322 of the Act. However, the provisions of the CCA are not retroactive, and the amended sections 320 and 322 of the Act apply only to individuals 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). Therefore, the Applicant's citizenship claim must be considered under the provisions of former section 321 of the Act.

Former section 321 of the Act provided in pertinent part 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

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clause (2) or (3) of this subsection, or thereafter begins to reside permanently in the United States while under the age of 18 years.

## II. ANALYSIS

As stated above, in order to establish derivative citizenship under former section 321 of the Act, the Applicant must show that either both his parents naturalized while the Applicant was under the age of 18, or that he meets one of the conditions for derivative citizenship through only one parent. The Director determined that the Applicant did not derive citizenship under former section 321 of the Act because only one of the Applicant's parents naturalized prior to the Applicant's 18th birthday. The Applicant does not contest this determination. Rather, the Applicant asserts on appeal that he derived citizenship solely from his U.S. citizen father pursuant to the provisions of former section 321(a)(3) of the Act. Specifically, the Applicant claims that he resided in his father's legal custody in the United States as a lawful permanent resident while under the age of 18.

The record includes, but is not limited to: the Applicant's birth certificate, the naturalization certificates of his parents, their marriage certificate, and affidavits they executed. All evidence was reviewed and considered in rendering this decision. Upon review, we conclude that the Applicant is not eligible to derive citizenship from his father under former section 321(a)(3) of the Act, because his parents were not legally separated before the Applicant's 18th birthday.

The record reflects that the Applicant has satisfied some of the requirements set forth in former section 321. Specifically, the Applicant's father naturalized on December 11, 1986, when the Applicant was [redacted] years old, and the Applicant was admitted to the United States as a lawful permanent resident on August 21, 1989, when he was [redacted] years old. However, in order to establish derivative citizenship through his U.S. citizen father pursuant to former section 321(a)(3) of the Act, the Applicant must also demonstrate that his parents were legally separated and that the father had legal custody of the Applicant before the Applicant turned 18 years of age.

The evidence does not show that the Applicant's parents were legally separated. The record includes the Applicant's birth certificate, indicating that his parents were married in Manila on [redacted] 1971. However, according to the sworn statement the Applicant's father executed on March 27, 1988, in connection with the Applicant's immigrant visa application, although the Applicant's parents lived together until 1977 and had two children together, they were not married to each other. In the sworn declarations submitted in the instant proceedings, the Applicant's parents confirm that they did not marry until [redacted] 2015.

The Applicant claims that his parents' statements that they were not married and did not live together after 1977, establish that they were legally separated for the purposes of derivative citizenship pursuant to former section 321(a)(3) of the Act. However, the term "legal separation" in section 321(a)(3) of the Act presupposes a valid marriage. *Barthelemy v. Ashcroft*, 329 F.3d 1062, 1065 (9th Cir. 2003) (child did not derive citizenship upon his father's naturalization because his parents never married and his mother did not naturalize; father raised the child alone). In the context of derivative citizenship, legal separation means either a limited or absolute divorce obtained

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through judicial proceedings. *Matter of H*, 3 I&N Dec. 742, 743-744 (BIA 1949) (“Since the subject’s parents were not lawfully joined in wedlock, they could not have been legally separated.”) *See also Morgan v. Attorney General*, 432 F.3d 226, 233 (3d Cir. 2005) (finding no legal separation absent a judicial decree); *Nehme v. INS*, 252 F.3d 415,426 (5th Cir. 2001) (finding that “in the United States, the term ‘legal separation’ is uniformly understood to mean *judicial* separation”) (emphasis in original).

The evidence does not establish that the Applicant’s parents were married prior to his 18th birthday. Because the Applicant’s parents were not married for the first time until [REDACTED], 2015, they could not have been “legally separated,” as this term is interpreted in the pertinent case law, when the Applicant was admitted to the United States as a lawful permanent resident in 1989, or at any time before his 18th birthday in [REDACTED] as required under former section 321(a)(3) of the Act.

The Applicant has not demonstrated by a preponderance of evidence that his parents were legally separated. Therefore, the Applicant has not established that he derived U.S. citizenship from his father pursuant to former section 321(a)(3) of the Act. Because the Applicant is statutorily ineligible for derivative citizenship under former section 321 of the Act for this reason, we do not reach the issue of whether the Applicant resided in his father’s legal custody pursuant to a lawful admission to the United States for permanent residence.

### III. CONCLUSION

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). The Applicant has not met that burden. Accordingly, we dismiss the appeal.

**ORDER:** The appeal is dismissed.

Cite as *Matter of A-E-G-*, ID# 16713 (AAO July 11, 2016)