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U.S. Department of Justice

Immigration and Naturalization Service

**Identifying data deleted to
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invasion of personal privacy**

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[Redacted]

JAN 08 2003

FILE: [Redacted] Office: Philadelphia Date:

IN RE: Applicant: [Redacted]

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

IN BEHALF OF APPLICANT: [Redacted]

INSTRUCTIONS:

PUBLIC COPY

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

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Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Philadelphia, Pennsylvania, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant was born on October 3, 1968, in Venezuela. The applicant's father, [REDACTED] was born in the Dominican Republic on May 31, 1947, and became a naturalized U.S. citizen in November 1982. The applicant's mother, [REDACTED] was born in Venezuela in October 1948 and never became a United States citizen. There is no documentation on record verifying that the applicant's parents married each other. However, there is documentation showing that they were divorced on June 30, 1987, when the applicant was 18 years old. The applicant was lawfully admitted for permanent residence on October 23, 1975. The applicant seeks a certificate of citizenship under section 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432.

It is noted that the applicant's birth certificate lists his birth as legitimate. It is also noted that common law marriages, where recognized, are terminated by a legal divorce.

The district director determined that the legal separation of the applicant's parents occurred after he had reached the age of 18 years, and he did not derive U.S. citizenship as a result of his father's naturalization. The district director then denied the application accordingly.

On appeal, counsel states that the applicant satisfied all of the requirements under the Child Citizen Act of 2000 (CCA) under section 320 of the Act. Counsel states that the applicant's father brought the applicant to the United States without his mother, with the mother's authorization, and that the applicant had lived with the father, who had always had full custody of him, since 1975.

The provisions of the CCA are not retroactive. Matter of Rodriguez-Trejedor, 23 I&N Dec. 153 (BIA 2001). The applicant was 32 years and 4 months old on February 27, 2001, and ineligible for consideration under the CCA.

The applicant indicates on his application that his mother has Service file A34 584 010, which is one number less than the applicant's Service file number. Service records indicate that she entered the United States at the same time as the applicant. However, the mother's Service file is not present for review to determine if it contains evidence of her marriage to the applicant's father or other related information. Should this matter appear before the Associate Commissioner again, it must be accompanied by Service file, A34 584 010.

Section 321 of the Act was repealed on February 27, 2001. An applicant who was over the age of 18 on that date is ineligible to obtain the new benefits of the Child Citizenship Act of 2000,

Pub.L. 106-395, which allows for the naturalization of "at least one parent" to suffice while the child is under the age of 18.

However, as noted in the publication of the interim rule implementing the CCA, all persons who acquired citizenship automatically under former section 321 of the Act, as previously in force prior to February 27, 2001, may apply for a certificate of citizenship at any time.

Section 321(a) of the Act in effect prior to being repealed, provides that 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 said 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 (2) or (3) of this subsection, or thereafter begins to reside permanently in the United States while under the age of 18 years.

In Matter of Fuentes, 21 I&N Dec. 893 (BIA 1997), the Board stated the following: "Through subsequent discussions, [the interested agencies] have agreed on what we believe to be a more judicious interpretation of section 321(a). We now hold that, as long as all the conditions specified in section 321(a) are satisfied before the minor's 18th birthday, the order in which they occur is irrelevant."

The record establishes that (1) the applicant's father became a naturalized U.S. citizen prior to the applicant's 18th birthday, (2) the applicant became the beneficiary of an approved visa petition filed by his father, and (3) he was residing in the United States in his parent's legal custody as a lawful permanent resident before they divorced in June 1987 when the applicant was 18 years

old. However, the applicant's mother never naturalized, as required, prior to the applicant's 18th birthday. Therefore, the applicant did not derive U.S. citizenship under former section 321 of the Act.

On appeal, counsel states that the applicant derived U.S. citizenship under section 322 of the Act, 8 U.S.C. § 1433. The applicant became 18 years of age in October 1986. Therefore, "old" section 322 of the Act in effect prior to the April 1, 1995, is applicable.

Section 322(a) of the Act, in effect prior to the amendments and at the time of the applicant's birth, and at the time of the last event, and as it still reads today, prior to and subsequent to the amendments of Pub. L. 95-114, 92 Stat. 918, Sec. 7 (1978), provides, in part, that:

A child born outside of the United States, one or both of whose parents is at the time of applying for the naturalization of the child, a citizen of the United States, either by birth or naturalization, may be naturalized if under the age of 18 years and not otherwise disqualified from becoming a citizen...and if residing permanently in the United States, with the citizen parent, pursuant to lawful admission for permanent residence, on the petition of such citizen parent, upon compliance with all the provisions of this title, except that no particular period of residence or physical presence in the United States shall be required....

An alien may acquire citizenship only upon strict compliance with the requirements that Congress has established by statute. INS v. Pangilinan, 486 U.S. 876, 884 (1988). Congress has provided that a citizen parent may apply for a child's naturalization under section 322 of the Act. There is no evidence in the record to show that a petition for naturalization was ever filed in the applicant's behalf by his U.S. citizen parent and approved prior to his 18th birthday.

8 C.F.R. § 341.2(c) provides that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. The applicant has failed to provide that evidence. Therefore, the appeal will be dismissed.

ORDER: The appeal is dismissed.