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U.S. Department of Justice

Immigration and Naturalization Service

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



FILE: [Redacted] Office: Hartford (BOS)

Date: JUN 11 2001

IN RE: Applicant: [Redacted]

APPLICATION: Application for Certificate of Citizenship under Section 341(a) of the Immigration and Nationality Act, 8 U.S.C. 1452(a)

IN BEHALF OF APPLICANT: [Redacted]

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which 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 which 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 which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Office

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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

The record reflects that the applicant was born on December 31, 1982, in Vietnam. The applicant's father, [REDACTED], was born in Vietnam in February 1954 and became a naturalized U.S. citizen on September 15, 2000, when the applicant was 17 years and 9 months old. The applicant's mother, [REDACTED] was born in 1958 in Vietnam and never became a United States citizen. The applicant's parents married each other on an unspecified date. The applicant was lawfully admitted for permanent residence on November 13, 1991. The applicant claims eligibility for a certificate of citizenship under sections 321 or 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1432 or 1433.

The district director denied the application after concluding that the applicant had failed to meet the age and other requirements.

On appeal, the applicant states that his father became a U.S. citizen while he was under 18 years of age, and the application was filed while he was under the age of 18 years.

Section 321(a) of the Act, provides, in part, 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.

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 (CCA),

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.

8 C.F.R. 322.2(a) provides that to be eligible for naturalization under section 322 of the Act, a child on whose behalf an application for naturalization has been filed by a parent who is, at the time of filing, a citizen of the United States, must:

- (1) Be unmarried and under 18 years of age, both at the time of application and at the time of admission to citizenship;
- (2) Reside permanently in the United States, in the physical and legal custody of the applying citizen parent, pursuant to a lawful admission;
- (3) Comply with other requirements for naturalization as provided in the Act....

The record establishes that (1) the applicant's father became a naturalized U.S. citizen 3 months prior to his 18th birthday, and (2) he was residing in the United States in his father's legal custody as a lawful permanent resident when his father naturalized.

However, in order for the applicant to receive the benefits of section 321 of the Act, in effect at that time, both parents must have naturalized. The applicant's mother never became a naturalized U.S. citizen prior to the applicant's 18th birthday.

In order to receive the benefits of section 322 of the Act, the applicant must have been under the age of 18 years both at the time of filing the application and at the time of admission to citizenship. The applicant became 18 years of age before processing of the application could be completed.

There is no provision under the law now by which the applicant could have automatically acquired U.S. citizenship through his father's naturalization. Therefore, the appeal will be dismissed. This decision is without prejudice to the applicant seeking U.S. citizenship through normal naturalization procedures.

ORDER: The appeal is dismissed.