



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: New York

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: Self-represented

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.

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Office

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

The applicant was born on May 8, 1987, in the Dominican Republic. The applicant's father, [REDACTED] was born in the Dominican Republic and never had a claim to U.S. citizenship. The applicant's mother, [REDACTED], was born in the Dominican Republic in October 1955 and never had a claim to United States citizenship. The applicant's parents never married each other. The applicant's mother married [REDACTED] in the Dominican Republic on November 11, 1989, and [REDACTED] became a naturalized U.S. citizen in October 1970. The applicant was lawfully admitted for permanent residence on March 3, 1995. The applicant is seeking a certificate of citizenship under section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1433.

The district director concluded that the application was filed by the applicant's stepfather and there was no provision in section 322 of the Act for a child to acquire U.S. citizenship through a stepparent. The district director denied the application accordingly.

On appeal, the applicant's father states that he and his wife are going to Santo Domingo to get their daughter's legal custody and they have been her parents for more than 12 years.

Section 322(a) of the Act provides that:

A parent who is a citizen of the United States may apply for naturalization on behalf of a child born outside of the United States who has not acquired citizenship automatically under section 320. The Attorney General shall issue such a certificate of citizenship to such parent upon proof, to the satisfaction of the Attorney General, that the following conditions have been fulfilled:

(1) At least one parent is a citizen of the United States, whether by birth or naturalization.

(2) The United States citizen parent-

(A) has been physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years; or

(B) has a citizen parent who has been physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years.

(3) The child is under the age of eighteen years.

(4) The child is residing outside of the United States in the legal custody and physical custody of the citizen parent, is temporarily present in the United States pursuant to a lawful admission, and is maintaining such lawful status.

(b) Upon approval of the application (which may be filed from abroad) and, except as provided in the last sentence of section 337(a), upon taking and subscribing before an officer of the Service within the United States to the oath of allegiance required by this Act of an applicant for naturalization, the child shall become a citizen of the United States and shall be furnished by the Attorney General with a certificate of citizenship.

(c) Subsections (a) and (b) shall apply to a child adopted by a United States citizen parent if the child satisfies the requirements applicable to adopted children under section 101(b)(1).

Sections 320 and 322 of the Act were amended by the Child Citizenship Act of 2000 (CCA), and takes effect on February 27, 2001. The CCA benefits all persons who have not yet reached their 18th birthdays as of February 27, 2001.

In the present matter, section 322 of the Act relates only to a child who is residing outside the United States in the legal and physical custody of the citizen parent. Section 320 of the Act relates to a child who is residing in the United States in the legal and physical custody of the citizen parent.

Section 320(a) of the Act provides that:

A child born outside of the United States automatically becomes a citizen of the United States when all of the following conditions have been fulfilled:

(1) At least one parent is a citizen of the United States, whether by birth or naturalization.

(2) The child is under the age of 18 years.

(3) The child is residing in the United States in the legal and physical custody of the citizen parent pursuant to a lawful admission for permanent residence.

(b) Subsection (a) shall apply to a child adopted by a United States citizen parent if the child satisfies the requirements applicable to adopted children under section 101(b)(1).



The definition of the term "child" contained in section 101(c) of the Act, 8 U.S.C. 1101(c), as used in title III does not include the term "stepchild." Further, a stepchild has never U.S. citizenship through the naturalization of his stepparents. INTERP 320.1(d).

8 C.F.R. 322.2(a) provides that to be eligible for "expeditious 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.

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 establish that her natural father, [REDACTED] filed the application in her behalf as a naturalized U.S. citizen. Therefore, the appeal will be dismissed.

This decision is without prejudice to the applicant's seeking U.S. citizenship through normal naturalization procedures by filing an Application for Naturalization on Form N-400 with a Service office having jurisdiction over her residence.

ORDER: The appeal is dismissed.