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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



Public Copy

JUN 18 2001

FILE:

Office: New York

Date:

IN RE: Applicant:

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

Identification data deleted to prevent clearly unwarranted invasion of personal privacy.

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

**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 June 24, 1981, in Bangladesh. The applicant's father, [REDACTED], was born in Bangladesh in 1950 and became a naturalized U.S. citizen on June 13, 1997. The applicant's mother, [REDACTED] was born in Bangladesh in 1952 and never had a claim to United States citizenship. The applicant's parents married each other in April 1969. The applicant was lawfully admitted for permanent residence on September 3, 1991. 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 reviewed the record and concluded that the applicant was over the age of 18 before final processing of the application had been completed.

On appeal, the applicant's father states that he could not appear on October 26, 1998, due to his illness as he underwent surgery at that time. The applicant's father submitted evidence that he underwent medical treatment in October 1998 in Bangladesh.

Section 322(a) of the Act provides, in part, that:

A parent who is a citizen of the United States may apply to the Attorney General for a certificate of citizenship on behalf of a child born outside the United States. The Attorney General shall issue such a certificate of citizenship 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 child is physically present in the United States pursuant to a lawful admission.
- (3) The child is under the age of 18 years and in the legal custody of the citizen parent.
- (4) If the citizen parent is an adoptive parent of the child, the child was adopted by the citizen parent before the child reached the age of 16 years and the child meets the requirements for being a child under subparagraph (E) or (F) of section 101(b)(1).
- (5) If the citizen parent has not been physically present in the United States or its outlying possessions for a period or periods totaling not less than 5 years, at least 2 of which were after attaining the age of 14 years-

(A) The child is residing permanently in the United States with the citizen parent, pursuant to a lawful admission for permanent residence, or

(B) A citizen parent of the citizen parent has been physically present in the United States or its outlying possessions for a period or periods totaling not less than 5 years, at least 2 of which were after attaining the age of 14 years.

(b) Upon approval of the application (which may be filed 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.

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. The applicant failed to fulfill the requirements prior to his 18th birthday.

Section 321(a) of the Act provided, prior to its being repealed on February 27, 2001, 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.

The record establishes that (1) the applicant's father became a naturalized U.S. citizens prior to his 18th birthday, and (2) the applicant 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, both parents must have naturalized prior to the applicant's 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 meet the age requirements of sections 321 and 322 of the Act, and 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 his residence.

**ORDER:** The appeal is dismissed.