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U.S. Department of Justice

Immigration and Naturalization Service

Public Conv



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

15 AUG 2002

FILE: [Redacted] Office: Chicago

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]

Identifying 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 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

Robert P. Wiemann, Director
Administrative Appeals Office

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

The record reflects that the applicant was born on March 22, 1976, in Kuwait. The applicant's father, [REDACTED] was born in Palestine in July 1934 and became a naturalized U.S. citizen on July 25, 1991, when the applicant was 15 years and 4 months old. The applicant's mother, [REDACTED] was born in the United Kingdom in July 1942 and never became a United States citizen. The applicant's parents married each other on January 11, 1968, and divorced on November 8, 1984, when the applicant was 8 years and 8 months old. The applicant was lawfully admitted for permanent residence on July 20, 1993, when she was 17 years and 4 months old. The applicant seeks a certificate of citizenship under former section 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1432

The district director noted that, although the applicant was lawfully admitted for permanent residence on July 20, 1993, she returned to England in August 1993 where she remained until July 12, 1997. The district director determined the record failed to establish that the applicant resided permanently in the United States after July 20, 1993, and denied the application accordingly.

On appeal, counsel states that the applicant derived U.S. citizenship when the last condition was fulfilled. Counsel asserts that the day the applicant was lawfully admitted to the United States for permanent residence on July 20, 1993, she derived U.S. citizenship as the last condition was fulfilled.

Section 321 of the Act was repealed on February 27, 2001, by the Child Citizenship Act (CCA) of 2000, Pub.L. 106-395, which removed the legal separation requirement from the rules of derivative naturalization. The provisions of the CCA are not retroactive. Matter of Rodriguez-Trejedor, 23 I&N Dec. 153 (BIA 2001). However, as noted in the publication of the interim rule implementing the CCA, all persons who acquired derivative 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.

Former section 321 of the Act provided, in 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 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 in reference to a Department of State *Passport Bulletin-96-18*, issued November 6, 1996: "Through subsequent discussions, [the interested agencies] have agreed on what we believe to be a more judicious interpretation of section 321(a) of the Act. 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. Citizenship would be acquired on the date the last condition is satisfied."

The record establishes that (1) the applicant's father became a naturalized U.S. citizen prior to the applicant's 18th birthday, (2) she became the beneficiary of an approved visa petition filed by her father, and thereafter (3) she began to reside in the United States in her father's legal custody as a lawful permanent resident.

The issue in this matter hinges on the phrase "**begins** to reside permanently in the United States while under the age of 18 years." The applicant clearly **began** to reside in the United States in her father's legal custody as a lawful permanent resident on July 20, 1993. Following Fuentes, once all the conditions of section 321 of the Act have been satisfied, derivative U.S. citizenship is acquired. The applicant satisfied all the conditions of section 321 of the Act on July 20, 1993, and acquired U.S. citizenship on that date. Therefore, it is immaterial where she resided the following week, month or year.

8 C.F.R. 341.2(c) states that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. The applicant has met this burden and established that she automatically acquired derivative U.S. citizenship on July 20, 1993. Accordingly, the appeal will be sustained.



ORDER: The appeal is sustained. The district director's decision is withdrawn, and the application is approved.