

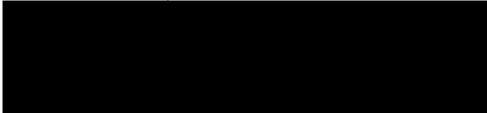


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U.S. Department of Justice
Immigration and Naturalization Service

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



FILE: [Redacted]

Office: Houston

Date: AUG 26 2002

IN RE: Applicant: [Redacted]

APPLICATION:

Application for Certificate of Citizenship under Section 320 of the
Immigration and Nationality Act, 8 U.S.C. 1431

IN BEHALF OF APPLICANT:



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, Director
Administrative Appeals Office

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

The applicant was born on May 29, 1990, in the Philippines. The applicant's father is unknown. The applicant's mother, [REDACTED] was born in the Philippines in November 1968 and became a naturalized U.S. citizen on August 3, 2001. The applicant's natural parents never married each other. The applicant was lawfully admitted for permanent residence on August 6, 1997. The applicant is seeking a certificate of citizenship under section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1431.

The district director reviewed the record and concluded that the applicant failed to meet the definition of "child" as that term is defined in section 101(c)(1) of the Act, 8 U.S.C. 1101(c)(1). The district director determined that the applicant was ineligible for the benefit sought and denied the application accordingly.

On appeal, counsel states that the Service erroneously interpreted section 101(c) of the Act as to the meaning of the word "child." Counsel states that because the applicant's natural mother is a U.S. citizen and because she submitted the application on behalf of her natural child, the applicant falls within the definition of child as set forth in section 101(c) of the Act.

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

Section 320(a) of the Act, effective on February 27, 2001, provides, in part, that a child born outside of the United States automatically becomes a citizen of the United States when all of the following conditions have fulfilled:

- (1) At least one parent of the child is a citizen of the United States, whether by birth or naturalization.
 - (2) The child is under the age of eighteen 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 United States citizen parent if the child satisfies the requirements applicable to adopted children under section 101(b)(1).

Section 101(c)(1) of the Act provides that the term "child" means an unmarried person under 21 years of age and includes a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in the

United States or elsewhere, and except as otherwise provided in section 320 of title III, a child adopted in the United States, if such legitimation or adoption takes place before the child reaches the age of 16 years except to the extent that the child is described in subparagraph (E)(ii) or (F)(ii) of subsection (b)(1), and the child is in the legal custody of the legitimating or adopting parent or parents at the time of such legitimation or adoption.

INTERPRETATIONS 320.1(c) states that (in the case of unlegitimated children) under the current statute, if both events (the mother's naturalization as a citizen of the United States subsequent to the birth of her child born out of wedlock and the child's lawful admission to the United States for permanent residence) occur before the unlegitimated child attains 16 years of age, and one of them occurs, or both of them occur, on or after December 24, 1952, citizenship vests as of the date on which the last qualifying condition is met, whichever is later in point of time.

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 met that burden, and the appeal will be sustained.

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