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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: Denver

Date: AUG 27 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: Self-represented

Public Copy

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, Denver, Colorado, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant was born on January 21, 1983, in France. The applicant's father [REDACTED] was born in Vietnam in 1954 and became a naturalized U.S. citizen on May 11, 2001. The applicant's mother, [REDACTED] was born in Vietnam in 1953. The application contains no information about the applicant's mother. The applicant's father states that both parents are U.S. citizens. The record is devoid of that evidence. The applicant was lawfully admitted for permanent residence on February 20, 1985. 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 was over the age of 18 years and denied the application accordingly.

On appeal, the applicant's father disagrees with that decision and states that he had his daughter's name included on his application for naturalization which he filed in July 2000.

Section 320 of the Act was 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 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 been 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 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.

To be eligible for naturalization under section 320 of the Act, a child on whose behalf an application 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 record reflects that the applicant was 18 years and 4 months old when her father naturalized on May 11, 2001, and the application was filed on May 14, 2001. Therefore, she is ineligible for the benefits of section 320 of the Act.

Section 321 of the Act was repealed on February 27, 2001. Former section 321(a) of the Act provided 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.

According to the applicant's father, he submitted his application for naturalization in July 2000 when the applicant was 17 years old. The statute at former section 321 of the Act required the parent's naturalization to occur prior to the child's 18th birthday. The applicant's father naturalized in May 2001 when the applicant was over the age of 18. Therefore, all of the statutory requirements of former section 321 of the Act were not satisfied while the applicant was under the age of 18 years.

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 she meets the requirements of section 320 or former section 321 of the Act. 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.