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U.S. Department of Justice

Immigration and Naturalization Service

**Identifying data deleted to prevent clearly unwarranted invasion of personal privacy**

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



FILE:



Office: New York

Date:

NOV 15 2002

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

**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, 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 November 18, 1967, in Canada, [REDACTED] both natives and citizens of Canada. The applicant's parents married each other prior to the applicant's birth, and neither parent ever became a U.S. citizen.

In August 1974, after the applicant's mother died, relatives took him to the United States to visit his father who had married a U.S. citizen and moved to Ohio. While staying with his father, the father abandoned the family and the applicant's step-mother applied for welfare. The applicant and his four siblings were taken away from the step-mother and placed in foster care for adoption. The applicant was adopted on July 18, 1979, at the age of 11 years. The applicant's adoptive father [REDACTED] was born in New Jersey in April 1949. The applicant's adoptive mother, [REDACTED] was born in Germany in June 1948 and never became a U.S. citizen. The applicant's adoptive parents married each other on November 29, 1975.

Following his adoption, the applicant lived with his adoptive parents for 3 1/2 years before the family moved to New Jersey. The applicant then returned to Canada to live with his natural father. In May 1983 the applicant returned to the United States with his natural father and, after having problems with his father, ran away. The applicant never obtained the status of lawful permanent resident. He seeks to become a naturalized citizen under section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The district director reviewed the record and noted that neither of the applicant's parents were U.S. citizens when he was born and that the applicant had never been lawfully admitted for permanent residence. The district director concluded that the applicant had failed to establish his eligibility for the benefit sought and denied the application accordingly.

On appeal, the applicant states that it was the responsibility of his adoptive parents to apply for his permanent resident status since he was a minor and could not do it himself. The applicant states that it was also the Service's responsibility to notify the adoptive parents of his status and to provide instructions for the proper procedures.

Sections 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. The applicant was 33 years and 3 months old on February 27, 2001. Therefore, he is not eligible for the benefits of the CCA.



Former section 320 of the Act prior to its amendment provided that:

(a) A child born outside of the United States, one of whose parents at the time of the child's birth was an alien and the other of whose parents then was and never thereafter ceased to be a citizen of the United States, shall, if such parent is naturalized, become a citizen of the United States, when

(1) such naturalization takes place while such child is under the age of 18 years; and

(2) such child is residing in the United States pursuant to a lawful admission for permanent residence at the time of naturalization or thereafter and begins to reside permanently in the United States while under the age of 18 years.

(b) Subsection (a) of this section shall apply to an adopted child only if the child is residing in the United States at the time of naturalization of such adoptive parent, in the custody of his adoptive parents, pursuant to a lawful admission for permanent residence.

The applicant does not qualify for consideration under former section 320 of the Act because neither of his natural parent's was a U.S. citizen at the time of his birth, and he was never lawfully admitted for permanent residence. Although his adoptive father may have been a U.S. citizen, his adoptive mother never naturalized.

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. Therefore, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.