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U.S. Department of Justice  
Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS  
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Washington, D. C. 20536

**PUBLIC COPY**

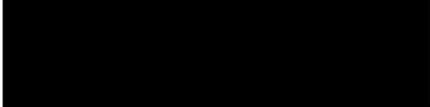


FILE  Office: New York

Date: 28 OCT 2002

IN RE: Applicant: 

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

IN BEHALF OF APPLICANT: 

**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, New York, New York, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained.

The applicant was born on January 1, 1995, in India. The biographical information on page 2 of the application is missing. Other documentation reflects that the applicant's father, [REDACTED] was born in India in 1964 and became a naturalized U.S. citizen on May 27, 1996. The applicant's mother [REDACTED] was born in India in 1970 and never had a claim to United States citizenship. The applicant's parents married each other in February 1994. The applicant was lawfully admitted for permanent residence on February 8, 1997. The applicant filed the application in April 1999, seeking a certificate of citizenship under section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1431.

The district director concluded, following a May 2001 interview, that the applicant was not currently residing in the United States and denied the application accordingly.

On appeal, counsel states that the applicant acquired a reentry permit for two years, is attending school in India and is temporarily staying in India. Counsel asserts that this reason for non-residence should be considered.

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. The applicant was 6 years old on February 27, 2001, therefore, he is eligible for the benefits of the CCA.

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 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 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 a United States citizen parent if the child satisfies the requirements applicable to adopted children under section 101(b)(1).

Service implementation instructions dated February 26, 2001, provide that children who acquire citizenship automatically when the CCA became effective should reflect February 27, 2001, as the

date of acquisition. Such a date will be for children who are lawful permanent residents under age 18 and who are living with and in the legal and physical custody of the citizen parent on February 27, 2001. The applicant was living in India at that time. He returned to the United States on May 31, 2001, and on December 2, 2001, for indeterminate lengths of time.

The instructions provide further that after February 27, 2001, the date reflected on the Certificate of Citizenship will be the date when the last requirement needed to acquire citizenship automatically under section 320 of the Act is met. That date can be either:

- (a) the date on which an alien parent of a qualifying child naturalizes, or
- (b) the date on which a qualifying child is lawfully admitted for permanent residence.

Although the applicant was not physically present and living with his citizen parent on February 27, 2001, he was admitted to the United States as a returning resident alien on May 31, 2001, thereby satisfying the requirements of section 320 of the Act and automatically acquiring U.S. citizenship on that date.

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 this burden; therefore, the appeal will be sustained.

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