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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: Hartford (BOS) Date: OCT 29 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, Boston, Massachusetts, and is now before the Associate Commissioner for Examinations on appeal. The appeal will rejected. His decision will be withdrawn, and the matter will be remanded to him for further consideration and action.

The applicant was born on January 31, 1991, in India. The applicant's father, was born in India in July 1958 and never had a claim to U.S. citizenship. The applicant's mother, was born in India in June 1961 and became a naturalized U.S. citizen on December 7, 1994. The applicant's parents married each other on April 2, 1990. The applicant was lawfully admitted for permanent residence in March 1991. 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 not residing permanently in the United States. The district director then denied the application accordingly.

On appeal, the applicant's mother states that she is staying in India with her husband, and her children are going to school in India. The applicant's mother states that the school year will only allow her to bring the children to the United States in April 2003.

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. The applicant was 10 years old on February 27, 2001. Therefore, she 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.
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> (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).

The record reflects that the applicant was born in India to a lawful permanent resident mother. In March 1991 the applicant entered the U.S. with her mother to obtain an NA-3 admission in order to create a record of lawful admission as a permanent

resident. She then returned to India where she has been living with her mother. In 1994 her mother returned to the United States, obtained U.S. citizenship and returned to India. Her mother returned to the United States in 2001 to apply for and obtain a U.S. passport for the applicant. She then returned to India on July 8, 2001.

In Matter of Villanueva, 19 I&N Dec. 101 (BIA 1984), the Board of Immigration Appeals (the Board) held that, unless void on its face, a valid United States passport issued to an individual as a citizen of the United States is not subject to collateral attack in administrative immigration proceedings but constitutes conclusive proof of such person's United States citizenship.

22 U.S.C. § 2705 provides that a passport, during its period of validity (if such period is the maximum period authorized by law), issued by the Secretary of State to a citizen of the United States, shall have the same force and effect as proof of United States citizenship as certificates of naturalization or of citizenship issued by the Attorney general or by a court having naturalization jurisdiction.

The record establishes that the applicant was issued a United States passport on June 7, 2001, valid for 5 years, the maximum period authorized by law for a person under 18 years of age. See 7 FAM 1384. Unless that passport is shown to be void on its face, the Associate Commissioner is bound by the decision in Matter of Villanueva.

The district director notes that the applicant's mother had been living in India since her marriage in 1990 and erroneously obtained U.S. citizenship in December 1994.

The Associate Commissioner will withdraw the district director's decision and remand the matter to him to enter a new decision either after commencing revocation of naturalization proceedings under section 340 of the Act, 8 U.S.C. § 1451, against the applicant's mother, or, after determining that the applicant's passport is void on its face, or, after accepting the applicant's U.S. passport as evidence of U.S. citizenship under the terms of 22 C.F.R. § 2705.

ORDER: The appeal is rejected. The district director's decision is withdrawn. The matter is remanded to him for further action consistent with the foregoing discussion and entry of a new decision which, if adverse to the applicant, is to be certified to the Associate Commissioner for review.