



Department of Homeland Security
Bureau of Citizenship and Immigration Services

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536



FILE: [Redacted] Office: Dallas

Date: **MAY 07 2003**

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 Bureau of Citizenship and Immigration Services (Bureau) 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Dallas, Texas, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant was born on July 24, 1997, in the Philippines. The applicant's father, [REDACTED] was born in the Philippines in February 1965 and became a naturalized U.S. citizen on August 25, 2001. The applicant's mother, [REDACTED] was born in the Philippines in April 1972 and never had a claim to United States citizenship. The applicant's parents married each other on October 8, 1996. The applicant was admitted to the United States as a nonimmigrant visitor on June 1, 2001. 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 establish his eligibility for the benefit sought because he had not been lawfully admitted for permanent residence. The district director denied the application accordingly.

On appeal, the applicant's father states that he was told to file a Form N-400 and an application to extend (the applicant's temporary stay). The applicant's father asserts that this is exactly what he did, and he requests a kind consideration.

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 3 years and 7 months 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).

A child who is currently residing in the United States with a U.S. citizen parent but who is in nonimmigrant or parole status does not qualify for automatic citizenship. Such a child will acquire

automatic citizenship only after he/she immigrates to the United States or adjusts status in the United States to that of lawful permanent resident. Once the child becomes a lawful permanent resident and all other requirements of the CCA are met, the child will be a citizen of the United States automatically by operation of law.

Pursuant to 8 C.F.R. § 341.2(c), 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 meet that burden because he has not been lawfully admitted for permanent residence. Therefore, the appeal will be dismissed.

ORDER: The appeal is dismissed.