

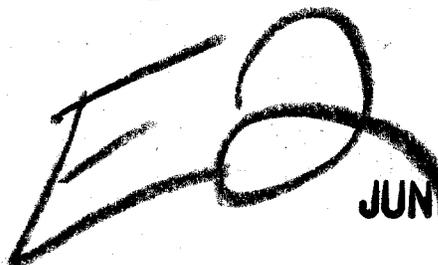
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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY


JUN 01 2004

FILE: [REDACTED] Office: NEW YORK, NY Date:

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under Section 321 of the Immigration and Nationality Act; 8 U.S.C. § 1432.

ON BEHALF OF APPLICANT:
[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.



Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director/District Director, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded to the Director/District Director for further action consistent with this decision.

The information contained on the applicant's N-600, Application for Certificate of Citizenship (N-600 application) indicates that the applicant was born in Yemen on May 7, 1977. The N-600 application indicates that the applicant's father was born in Yemen, and that he became a naturalized U.S. citizen on August 7, 1979. The N-600 application indicates that the applicant's mother was born in Yemen and had no claim to U.S. citizenship. The N-600 application indicates that the applicant's parents were married in January 1958, and that both of the applicant's parents died (his mother in July 1988, and his father in August 1995.) The applicant was lawfully admitted for permanent residence in the United States on July 13, 1994. He is seeking a certificate of citizenship pursuant to section 321 of the former Immigration and Nationality Act (the former Act), 8 U.S.C. § 1432.

The director/district director (DDD) concluded that the Yemeni birth, death and marriage documentation submitted by the applicant was fraudulent, and that the applicant had therefore failed to establish that he qualified for a certificate of citizenship. The application was denied accordingly.

The DDD stated, in pertinent part:

You are claiming to have derived citizenship based on Section 321.2, through a surviving parent who is a citizen, and the other non-citizen parent who was deceased before your 18th birthday The variance of the documents submitted, the marriage certificate, death certificate of your mother, and your birthday certificate cannot be used in support of your N-600 application. Based on information received from the American Consulate in Yemen there is a prevalence of legitimately issued documents based on fictitious or inaccurate information by that government. Therefore, at this time no credibility or weight may be given to such documentation, and in your case specifically. As there are no reliable documents to establish that the death of your mother had occurred prior to your 18th birthday, you are found ineligible for the benefit you are seeking in this application. Your application is denied as a matter of law.

See Director/District Director Decision, dated October 9, 2002.

On appeal, counsel asserts that the DDD unconstitutionally violated the applicant's civil and equal protection rights by applying a generalized policy in his case and by failing to explain to the applicant why his particular documentation was rejected. Counsel points out that the authenticity of the applicant's supporting documentation was accepted by the Immigration and Naturalization Service when the applicant immigrated to the U.S. through his father in 1994. Counsel concludes that the applicant meets all of the requirements for a certificate of citizenship, and that because the DDD's decision failed to specifically identify any problem with the documentation submitted by the applicant, the application for a certificate of citizenship should be approved.

8 C.F.R. § 103.3(a)(1)(i) states in pertinent part:

(a) Denials and appeals – (1) General –

(i) [W]hen a Service officer denies an application or petition filed under § 103.2 of this part, the officer shall explain in writing the specific reasons for denial.

8 C.F.R. § 320.5 states in pertinent part:

(b) [I]f the decision of the district director is to deny the application for a certificate of citizenship under this section, the applicant shall be furnished with the reasons for denial and advised of the right to appeal in accordance with the provisions of 8 C.F.R. 103.3(a).

The AAO finds that the DDD's decision did not explain specific reasons for its denial of the applicant's certificate of citizenship. The DDD's decision states that the American Consulate in Yemen provided information that, "there is a prevalence of legitimately issued documents based on fictitious or inaccurate information being issued by that government." The DDD provides no other explanation or basis for his fraud finding and subsequent denial of the applicant's claim.

The AAO finds that the explanation provided by the DDD is a generalized statement that is unsubstantiated by any official policy or evidence in the record. The AAO finds further that the general statement does not support, without further individualized and specific evidence of fraud, the DDD's conclusion that the death certificate and other documentation submitted by the applicant are unreliable and can be given no weight.

The AAO notes that the record of proceedings in the present case reflects that the DDD conducted a CIS investigation into the authenticity of several of the documents submitted by the applicant. The record of proceedings reflects further that CIS findings were made pursuant to the DDD initiated investigation. The DDD decision fails, however, to discuss or analyze the results of the fraud investigation, and the DDD decision does not discuss whether, or how the investigation results support a finding that the documents submitted by the applicant are fraudulent. The AAO finds that rather than making an unsubstantiated and general statement about Yemeni document fraud, the DDD must instead explain if and how the individual investigation results in this case led her to conclude that the documentation submitted by the applicant was fraudulent.

Because the DDD's decision failed to explain specific reasons for his denial of the applicant's case, the AAO finds it necessary to remand the present matter to the DDD for review of CIS records relating to the applicant and for a new decision explaining any individualized fraud investigation findings in the applicant's case. If a new decision is adverse to the applicant, the decision shall be certified to the AAO for review.

ORDER: The matter is remanded to the director/district director for further action consistent with this decision.