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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

E2

[Redacted]

FILE:

[Redacted]

Office: NEW YORK, NEW YORK

Date:

AUG 10 2005

IN RE:

Applicant:

[Redacted]

APPLICATION:

Application for Certificate of Citizenship pursuant to Section 320 of the Immigration and Nationality Act, 8 U.S.C. § 1431 and Sections 321 and 322 of the former Immigration and Nationality Act, 8 U.S.C. §§ 1432 and 1433.

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, New York, New York. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born in the Dominican Republic on December 20, 1970. The applicant's mother, [REDACTED] was born in the Dominican Republic, and she became a naturalized U.S. citizen on November 5, 1986, when the applicant was fifteen years old. The applicant's father, [REDACTED] was born in the Dominican Republic, and he became a naturalized U.S. citizen on May 31, 1989, when the applicant was eighteen years old. The applicant's parents were married on March 6 1958, and the applicant was admitted into the U.S. as a lawful permanent resident on June 28, 1971. The applicant seeks a certificate of citizenship pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431 and sections 321 and 322 of the former Immigration and Nationality Act (the former Act), 8 U.S.C. §§ 1432 and 1433.

The district director concluded that the applicant was ineligible for citizenship under section 320 of the Act because he was over the age of eighteen on February 27, 2001, when the amended provision took effect. The district director concluded further that the applicant was ineligible for citizenship under section 321 of the former Act because his father did not become a naturalized U.S. citizen prior to the applicant's eighteenth birthday. The district director additionally concluded that the applicant was ineligible for citizenship under section 322 of the former Act, because his application was not approved prior to his eighteenth birthday.

On appeal, the applicant asserts that his parents submitted a Form N-600, Application for Certificate of Citizenship (N-600 Application) on his behalf in 1985, prior to his eighteenth birthday. The applicant indicates that U.S. Citizenship and Immigration Services (CIS, formerly the Immigration and Naturalization Service, Service) negligence caused a delay in the processing of his N-600 application and that he should not be penalized for the processing delays of CIS.

The AAO notes that the requirements for citizenship as set forth in the Immigration and Nationality Act are statutorily mandated, and that an applicant is required to meet the statutory provisions in order to obtain U.S. citizenship under the Act. The applicant must therefore satisfy the provisions for citizenship as set forth in section 320 of the Act and sections 321 and 322 of the former Act, and his eligibility for citizenship under these provisions is not affected or changed by CIS processing delays.

Section 320 of the former Immigration and Nationality Act (former Act) was amended by the Child Citizenship Act of 2000 (CCA), which took effect on February 27, 2001. Section 320 of the Act, as amended, permits a child born outside of the U.S. to automatically become a citizen of the United States upon fulfillment of the following conditions:

- (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.

Legal precedent decisions have made clear that the provisions of the CCA are not retroactive and that the amended provisions of section 320 of the Act apply only to persons who were not eighteen years old as of February 27, 2001. Because the applicant was over the age of eighteen on February 27, 2001, he is not

eligible for the benefits of section 320 of the amended Act. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001).

Section 321 of the former Act provided, in pertinent part, that:

(a) [A] child born outside of the United States of alien parents, or of an alien parent and a citizen parent who has subsequently lost citizenship of the United States, becomes a citizen of the United States upon fulfillment of the following conditions:

- (1) The naturalization of both parents; or
- (2) The naturalization of the surviving parent if one of the parents is deceased;
or
- (3) The naturalization of the parent having legal custody of the child when there has been a legal separation of the parents or the naturalization of the mother if the child was born out of wedlock and the paternity of the child has not been established by legitimation; and if-
- (4) Such naturalization takes place while said child is under the age of 18 years;
and
- (5) Such child is residing in the United States pursuant to a lawful admission for permanent residence at the time of the naturalization of the parent last naturalized under clause (2) or (3) of this subsection, or thereafter begins to reside permanently in the United States while under the age of 18 years.

The applicant failed to establish that his father became a naturalized U.S. citizen prior to the applicant's eighteenth birthday, and the record fails to demonstrate that the applicant's parents have at any time obtained a legal separation or divorce. The applicant therefore does not qualify for citizenship under section 321 of the former Act.

Section 322 of the former Act stated, in pertinent part:

(a) Application of citizen parents; requirements

A parent who is a citizen of the United States may apply to the Attorney General [now the Secretary, Homeland Security, "Secretary"] for a certificate of citizenship on behalf of a child born outside the United States. The Attorney General [Secretary] shall issue such a certificate of citizenship upon proof to the satisfaction of the Attorney General [Secretary] that the following conditions have been fulfilled:

- 1) At least one parent is a citizen of the United States, whether by birth or naturalization.
- 2) The child is physically present in the United States pursuant to a lawful admission.
- 3) The child is under the age of 18 years and in the legal custody of the citizen parent.

- 5) If the citizen parent has not been physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years –
 - A) the child is residing permanently in the United States with the citizen parent, pursuant to a lawful admission for permanent residence, or
 - B) a citizen parent of the citizen parent has been physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years.

b) Attainment of citizenship status; receipt of certificate

Upon approval of the application . . . [and] upon taking and subscribing before an officer of the Service [CIS] within the United States to the oath of allegiance required by this chapter of an applicant for naturalization, the child shall become a citizen of the United States and shall be furnished by the Attorney General [Secretary] with a certificate of citizenship.

The applicant claims that his mother filed an N-600 application on his behalf on December 18, 1985. The AAO notes that the applicant's mother was not a naturalized U.S. citizen at that time and that she was therefore not entitled to file an N-600 application on the applicant's behalf. Thus, the applicant failed to establish that an N-600 application was properly filed or completed prior to his eighteenth birthday, or that he took an oath of allegiance prior to his eighteenth birthday. The applicant therefore failed to establish that he qualifies for citizenship under section 322 of the former Act.

8 C.F.R. § 341.2(c) provides that the burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. The applicant has failed to meet his burden. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.