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**U.S. Citizenship  
and Immigration  
Services**

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FILE: [REDACTED] Office: ATLANTA, GA

Date: **JAN 31 2005**

IN RE: Applicant: [REDACTED]

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

ON BEHALF OF APPLICANT:

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the District Director, Atlanta, Georgia, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born in Germany on September 17, 1987. The applicant's stepfather, [REDACTED] was born in Bainbridge, Georgia on May 22, 1965, and he is a U.S. citizen. The applicant's mother, [REDACTED] was born in Germany on November 17, 1958, and she is not a U.S. citizen. The applicant was admitted into the United States on February 7, 1995, as a lawful permanent resident. The applicant seeks a certificate of citizenship pursuant to section 320 of the Act, 8 U.S.C. § 1431, based on the claim that he is the biological son of his stepfather.

The director found that the applicant had failed to establish he was either legitimated or adopted by [REDACTED]. The application was denied accordingly.

On appeal, counsel asserts that [REDACTED] the applicant's biological father and that [REDACTED] name was not recorded on the applicant's birth certificate because birth certificates in Germany do not include the name of an unmarried father.

Section 320 of the Act states, in pertinent part:

(a) 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).

Section 101(c) of the Act states that:

(c) As used in title III-

- (1) The term "child" means an unmarried person under twenty-one years of age and includes a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in the United States or elsewhere, and, except as otherwise provided in sections 320, and 321 of title III, a child adopted in the United States, if such legitimation or adoption takes place before the child reaches the age of 16 years (except to the extent that the child is described in subparagraph (E)(ii) or (F)(ii) of subsection (b)(1)), and the child is in the legal custody of the legitimating or adopting parent or parents at the time of such legitimation or adoption.

Section 101(b)(1) of the Act states in pertinent part that:

(b) As used in titles I and II-

(1) The term "child" means an unmarried person under twenty-one years of age who is-

...

(E) (i) a child adopted while under the age of sixteen years if the child has been in the legal custody of, and has resided with, the adopting parent or parents for at least two years: Provided, That no natural parent of any such adopted child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act

The AAO finds that the applicant's birth certificate fails to establish that [REDACTED] is the applicant's biological father. The AAO finds further that the record contains no evidence to establish that [REDACTED] legitimated the applicant at any time pursuant to U.S. or German law.

Moreover, the AAO notes that, although a stepchild qualifies as a "child" under section 101(b)(1)(B) of the Act, 8 U.S.C. § 1101(b)(1)(B), for nonimmigrant and immigrant **visa** Title I and Title II of the Act purposes, a stepchild is not included in the definition of a "child" pursuant to section 101(c)(1) of the Act, for Title III **citizenship** purposes.<sup>1</sup> Rather, under sections 101(c) and 320 of the Act, a U.S. citizen parent cannot obtain citizenship for a stepchild unless the parent legally adopts the child and presents, among other things, proof of such adoption prior to the child's 16<sup>th</sup> birthday. The adopted child must additionally establish that he or she meets the requirements set forth in section 101(b)(1) of the Act.

The AAO finds that in the present case, the applicant has also failed to establish that he was legally adopted by his U.S. citizen stepfather or that he otherwise meets the definition of "child" as set forth in section 101(c) of the Act.

8 C.F.R. 341.2(c) states that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. *See also* § 341 of the Act, 8 U.S.C. § 1452. The applicant has not met his burden. The appeal will therefore be dismissed.

**ORDER:** The appeal is dismissed.

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<sup>1</sup> The AAO notes that pursuant to section 101(b)(1)(B) of the Act:

(b) As used in titles I and II-

(1) The term "child" [includes] an unmarried person under twenty-one years of age who is-

...

(B) a stepchild, whether or not born out of wedlock, provided the child had not reached the age of eighteen years at the time the marriage creating the status of stepchild occurred