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U.S. Citizenship
and Immigration
Services

E2

FILE:

Office: ST. PAUL (BLOOMINGTON), MN

Date: **NOV 15 2005**

IN RE:

Applicant:

APPLICATION:

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

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, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, St. Paul, Minnesota, 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 Canada on October 9, 1986. The applicant was adopted in Canada on March 12, 1987, by [REDACTED]. The record reflects that the applicant's adoptive mother was Canadian and that her adoptive father was born in the United States and is a U.S. citizen. The applicant seeks a certificate of citizenship based on the claim that she acquired U.S. citizenship through her adoptive father [REDACTED].

The district director concluded the applicant had failed to establish that, prior to her eighteenth birthday, she resided in the United States pursuant to a lawful admission for permanent residence as required by section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431. The application was denied accordingly.

On appeal, [REDACTED] asserts that the applicant resided in his legal and physical custody prior to her eighteenth birthday, and that he was advised by U.S. Citizenship and Immigration Services (CIS) that the applicant automatically qualified for U.S. citizenship at the time of her entry into the United States on September 30, 2000.

Section 320 of the Act states in pertinent part that:

(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(b)(1)(E)(i) of the Act states, in pertinent part, that the term "child" means an unmarried person under twenty-one years of age who is-

[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

Legal custody vests "by virtue of either a natural right or a court decree". *Matter of Harris*, 15 I&N Dec. 39 (BIA 1970), and the two-year residence requirement set forth in section 101(b)(1)(E) of the Act may be satisfied either before or after an adoption. *Matter of Repuyan*, 19 I&N Dec. 119, 120 (BIA 1984).

The present record contains an adoption decree reflecting that [REDACTED] legally adopted the applicant in Canada on March 12, 1987, when she was less than one year old. The applicant has therefore established that [REDACTED] had legal custody for at least two years prior to the applicant's sixteenth birthday. The record

additionally contains the applicant's high school records reflecting that she attended Pittsville High School in Wisconsin from October 2000 through May 28, 2004, and that she resided with [REDACTED] during that time. The applicant therefore also established that she resided in the physical custody [REDACTED] for at least two years prior to her sixteenth birthday on October 9, 2002. Accordingly, the applicant has established that she meets the definition of "child" as set forth in section 101(b)(1)(E)(i) of the Act, and as required for section 320 of the Act purposes.

The record also contains a U.S. Wisconsin birth certificate reflecting that [REDACTED] was born in Milwaukee, Wisconsin on February 6, 1952, and that he was a U.S. citizen prior to the applicant's eighteenth birthday. However, the record contains no evidence to establish that prior to her eighteenth birthday, the applicant resided in the U.S. pursuant to a lawful admission for permanent residence. The applicant has therefore failed to establish that she acquired U.S. citizenship under section 320 of the Act.

The AAO notes that the applicant also failed to establish that she acquired U.S. citizenship pursuant to section 301(a)(7) of the former Immigration and Nationality Act (the former Act), 8 U.S.C. § 1401(a)(7) (now known as section 301(g) of the Act, 8 U.S.C. § 1401(g)), which states in pertinent part that:

The following shall be nationals and citizens of the United States at birth: . . . a person born outside the geographical limits of the United States . . . of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States . . . for a period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years.

As stated by the Board of Immigration Appeals in *Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001), the statutory language contained in section 301 of the Act, "[r]equires that the child be born of a United States citizen. There is no indication that this section applies to an adopted child".

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. The applicant has failed to meet her burden in the present matter. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.