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

E2

FILE:

Office: NEW YORK, NY

Date: **OCT 26 2005**

IN RE:

Applicant:

APPLICATION:

Application for Certificate of Citizenship pursuant to Section 321 of the former Immigration and Nationality Act; 8 U.S.C. § 1432.

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.

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 information contained on the applicant's N-600, Application for Certificate of Citizenship (N-600 application) reflects that the applicant was born in Yemen on September 10, 1969. The applicant's father [REDACTED] was born in Yemen, and he became a naturalized U.S. citizen on September 7, 1971, when the applicant was one year old. The applicant's mother [REDACTED] was born in Yemen. She was not a U.S. citizen. The N-600 application reflects that the applicant's parents were married in Yemen on an unknown date. The applicant was admitted into the United States as a lawful permanent resident on January 13, 1987, when he was seventeen years old. He presently seeks a certificate of citizenship based on the claim that he acquired U.S. citizenship prior to his eighteenth birthday through his father.

An investigation of the Yemeni documentation submitted in the present matter revealed that the applicant's parents' marriage certificate and divorce decree were most likely fraudulent. The district director determined that the evidence was thus not probative, and the applicant was found to be ineligible for citizenship under section 321 of the former Immigration and Nationality Act (the former Act), 8 U.S.C. § 1432. The district director found that the applicant also did not qualify for citizenship under section 322 of the former Act, 8 U.S.C. § 1433, because he was not approved for citizenship prior to his eighteenth birthday. In addition, the district director found that the applicant did not qualify for citizenship under section 320 of the amended Immigration and Nationality Act (the Act), 8 U.S.C. § 1431, because he was over the age of eighteen when the provision took effect on February 27, 2001. The N-600 application was denied accordingly.

Counsel asserts on appeal that the applicant's parents' divorce was legally obtained, and that the district director's decision did not support its fraud findings with specific facts or evidence. Counsel additionally asserts that the applicant was issued a U.S. passport based on his U.S. citizenship status through his father.

The AAO notes that counsel provides no other information pertaining to the applicant's U.S. passport, and the record contains no evidence to establish the existence of a U.S. passport issued to the applicant.

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 record contains a March 2004, fraud investigation report ("Report") conducted by the American Embassy, Consular Section fraud prevention unit in Al Rabat Ibb, Yemen. The Report states in pertinent part that:

[T]he Divorce Certificate appears to have [sic] been fraudulently obtained because the certificate was purportedly issued in 1987 while the witnesses' IDs on the certificate state that IDs were issued in 1999 and 1998. In addition, the name, signature and the ID information for the divorcee were left blank at the bottom of the certificate, which violates Yemeni issuance protocol.

The Report states further that:

[T]he Marriage Certificate is fraudulent because the letterhead has been altered from Taiz Office to Badan Office. Also, the certificate states that it was issued by the AlShariah Court of Badan District, Ibb province, while the wet seal states that it was issued by the Appeals Court of Taiz province. This, too, violates Yemeni issuance protocol, as all letterhead, stamps and seals should bear the name of the same issuing authority within the same province."

In addition, the Report indicates that although the "Judgment of Custody of Child" appears to be lawfully issued, the Judgment "[w]as purportedly issued in 2002 when, according to Amin's Birth Certificate, Amin Aldailam was 32 years old, making the necessity for this document moot and its origin highly suspect."

The record contains no evidence to overcome the fraud investigation report findings discussed above, and the AAO finds that the Report establishes that the marriage and divorce certificates submitted by the applicant are unreliable and not probative of the marriage and divorce of the applicant's parents. Accordingly, the AAO finds that the applicant failed to establish that his parents married, or that his father obtained legal custody over him pursuant to a legal separation or divorce. The applicant also failed to establish that both of his parents became naturalized U.S. citizens prior to his eighteenth birthday. The applicant therefore does not qualify for citizenship pursuant to section 321 of the former Act.

The applicant also failed to establish that he qualifies for citizenship pursuant to section 322 of the former Act.

Section 322 of the former Act provides, 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.

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 failed to meet the requirements set forth in section 322(b) of the former Act, because his father did not file the N-600 application before the applicant turned eighteen, and because the applicant did not take an oath of allegiance prior to his eighteenth birthday.

Former section 320 of the Act provided that:

(a) A child born outside of the United States, one of whose parents at the time of the child's birth was an alien and the other of whose parents then was and never thereafter ceased to be a citizen of the United States, shall, if such parent is naturalized, become a citizen of the United States, when

(1) such naturalization takes place while such child is under the age of 18 years; and

(2) such child is residing in the United States pursuant to a lawful admission for permanent residence at the time of naturalization or thereafter and begins to reside permanently in the United States while under the age of 18 years.

Neither of the applicant's parents were U.S. citizens when he was born. The applicant therefore does not qualify for consideration under former section 320 of the Act.

The AAO notes that the Child Citizenship Act of 2000 (CCA), which took effect on February 27, 2001, amended sections 320 and 322 of the former Act. The provisions of the CCA are not retroactive, however, and the amended provisions of section 320 and 322 of the Act, apply only to persons who were not yet 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 consideration under the provisions contained in the amended Act. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001).

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

ORDER: The appeal is dismissed.