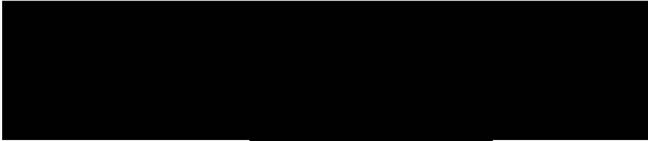




U.S. Citizenship  
and Immigration  
Services

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invasion of personal privacy**



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FILE:



Office: VERMONT SERVICE CENTER

Date: FEB 27 2007

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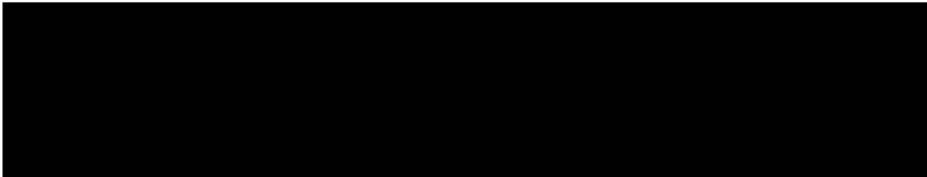
Applicant:



APPLICATION:

Application for Certificate of Citizenship under Section 320 of the Immigration and Nationality Act, as amended, 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, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Vermont Service Center, 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 Nigeria on September 21, 1983. The applicant's father, also born in Nigeria, became a naturalized U.S. citizen on July 26, 2002, when the applicant was 18 years old. The record does not indicate that the applicant's mother, [REDACTED] is a U.S. citizen or has acquired U.S. citizenship. The applicant's parents were divorced on August 13, 1997. The applicant was admitted to the United States as a lawful permanent resident status on April 5, 2004. She seeks a certificate of citizenship under section 320(a) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431(a).

The district director concluded that, as the applicant was more than 18 years of age at the time of her adjustment to lawful permanent resident status, she was ineligible for benefits under section 320 of the Act. Accordingly, he denied the Form N-600, Application for Certificate of Citizenship.

On appeal, counsel contends that the applicant's Form N-600, Application for Certificate of Citizenship, should be approved nunc pro tunc, as Citizenship and Immigration Services' (CIS) consideration of her Form I-485, Application to Register Permanent Residence or Adjust Status, was delayed by processing backlogs. He points to the January 6, 1998 priority date of the Form I-130, Petition for Alien Relative, filed by the applicant's father and states that the applicant was unable to apply for adjustment until that priority date became current in April 2003. He asserts that the provisions of the Child Status Protection Act (CSPA) require CIS to find that the applicant acquired lawful permanent resident status when she was 18 years of age and, as a result, to meet the requirements for a certificate of citizenship. In support of this position, he cites the findings in *Harriott v. Ashcroft, et al*, 277 F.Supp. 2d 538, 542-542-45 (E.D. PA, 2003) and *In re Ki Nam Kim*, a non-published decision of the Board of Immigration Appeals (BIA) issued on June 7, 2006.

Section 320 of the Act was amended by the Child Citizenship Act of 2000 (CCA), and took effect on February 27, 2001. The CCA benefits all persons who had not yet reached their eighteenth birthdays as of February 27, 2001. Because the applicant was 17 years old on February 27, 2001, she meets the age requirement for benefits under the CCA.

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.

The record establishes the naturalization of the applicant's father and her adjustment to lawful permanent resident status. However, neither event occurred prior to the applicant's 18<sup>th</sup> birthday, as required by the provisions of section 320(a) of the Act. The applicant's father became a U.S. citizen on July 26, 2002, when the applicant was 18 years of age. She adjusted to lawful permanent resident status on April 5, 2004 at 20 years of age. Accordingly, the record does not establish that the applicant is eligible for a certificate of

citizenship under section 320(a) of the Act.

In reaching its determination, the AAO has considered counsel's assertions that the delays associated with immigrant visa processing should result in the approval of the instant Form N-600. As previously noted, counsel contends that the provisions of the CSPA require CIS to view the applicant as being 18 years old at the time of her adjustment, her age on the date of her father's 2002 naturalization, and submits a copy of the 2002 CSPA guidance issued by the former Immigration and Naturalization Service, now CIS, which addresses this issue. *See* Memorandum from Johnny N. Williams, Executive Associate Commissioner, Office of Field Operations, Immigration and Naturalization Service, *The Child Status Protection Act*, HQADN 70/6.1.1 (September 20, 2002). As the applicant was only 18 years of age on the date she acquired lawful permanent resident status, counsel states, her adjustment complies with the requirements of section 320(a) of the Act.

However, the CSPA protections referenced by counsel and now found in section 201(f)(1) and (2) of the Act, 8 U.S.C. §§ 1151(f)(1) and (2), include language that states they are applicable "for the purposes of subsection (b)(2)(A)(i)," which defines the term "immediate relatives." *See* section 201(b)(2)(A), 8 U.S.C. § 1151(b)(2)(A)(i). They have no bearing on any provisions of Title III of the Act, which covers nationality and naturalization. A person may obtain naturalization only upon strict compliance with the requirements of the relevant statute. *INS v. Pangilinan*, 486 US 875 (1988). Section 320 of the Act stipulates that an applicant be less than 18 years of age at the time its other requirements are satisfied. Although for the purposes of benefiting from the Form I-485, the applicant's age may have been frozen as of her father's date of naturalization, the applicant was 20 years of age at the time she adjusted to lawful permanent resident status. Accordingly, her age at the time of adjustment does not meet the requirements of section 320(a) of the Act.

Even if counsel's reasoning were to be accepted, it would not establish the applicant's eligibility for a certificate of citizenship. To satisfy section 320(a) of the Act, applicants must prove that their adjustment to lawful permanent resident status took place prior to their 18<sup>th</sup> birthdays. Accordingly, counsel's assertion that CSPA provisions establish the applicant at the time of her adjustment as being 18 years of age undermines rather than proves her claim to derivative citizenship. To obtain a certificate of citizenship under section 320(a) of the Act, the applicant's adjustment would have to have occurred prior to September 21, 2001, the date of her 18<sup>th</sup> birthday.

The AAO also notes that the naturalization of the applicant's father did not take place prior to her 18<sup>th</sup> birthday, but approximately ten months later. For this reason as well, the applicant is not eligible for a certificate of citizenship under section 320 of the Act.

The applicant has not established that she is eligible for a certificate of citizenship based on her father's naturalization. Accordingly, the appeal will be dismissed.

The regulation at 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 not met her burden in this proceeding.

**ORDER:** The appeal is dismissed.