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U.S. Citizenship
and Immigration
Services

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JUN 01 2007

FILE:

Office: VERMONT SERVICE CENTER Date:

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, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the application will be denied.

The record reflects that the applicant was born on August 15, 1986, in Peru. The applicant's mother, [REDACTED] was born in Peru, and she became a naturalized U.S. citizen on April 14, 2003, when the applicant was sixteen years old. The applicant's father is not a U.S. citizen. The applicant's parents were married in Peru on February 28, 1986. The applicant presently seeks a certificate of citizenship pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The director determined that the applicant was ineligible for citizenship under section 320 of the Act, because he was over the age of eighteen when he became a U.S. lawful permanent resident. The application was denied accordingly.

On appeal, the applicant asserts that his mother became a naturalized U.S. citizen in 2003, while the applicant was under the age of eighteen. The applicant asserts further that his mother applied for his adjustment of status to that of a lawful permanent resident prior to his eighteenth birthday. The applicant indicates that U.S. Citizenship and Immigration Services (CIS) errors caused a delay in the processing of his adjustment of status application, and he indicates that he should not be penalized for CIS errors and processing delays.

It is noted that the requirements for citizenship as set forth in the Immigration and Nationality Act are statutorily mandated. An applicant is thus required to fully meet the statutory provisions in order to obtain U.S. citizenship under the Act. Accordingly, the AAO finds that the applicant must satisfy all of the statutory requirements for citizenship as set forth in section 320 of the Act, and that his eligibility for citizenship under these provisions is not affected or changed by CIS processing errors or delays.

Section 320 of the Act provides 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 contains a U.S. Certificate of Naturalization reflecting that the applicant's mother became a naturalized U.S. citizen on April 14, 2003, prior to the applicant's eighteenth birthday. The applicant has therefore established that he meets the requirement set forth in section 320(a)(1) of the Act. The record additionally reflects that the applicant resided in the legal and physical custody of his U.S. citizen mother prior to his eighteenth birthday, as set forth in section 320(a)(3) of the Act. The applicant's U.S. lawful permanent resident card, and documentation contained in the record reflect, however, that the applicant was accorded status as a U.S. lawful permanent resident on December 13, 2004, after his eighteenth birthday. The

applicant thus failed to establish that he met the U.S. lawful permanent resident requirement contained in section 320(a)(3) of the Act, prior to his eighteenth birthday.¹

The regulation at 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. In the present matter, the applicant failed to establish that prior to his eighteenth birthday he fully satisfied the requirements for U.S. citizenship as set forth in section 320 of the Act. The appeal will therefore be dismissed and the application denied.

ORDER: The appeal is dismissed. The application is denied.²

¹ It is noted that the record contains a copy of a Department of State, U.S. passport issued to the applicant on April 26, 2006. Because the record contains clear evidence of the applicant's failure to satisfy section 320(a)(3) of the Act requirements for citizenship, the applicant's passport is not probative of his U.S. citizenship status in the present matter.

² The AAO notes that the present decision is without prejudice to the applicant's filing an N-400, Application for Naturalization pursuant to section 316 of the Act, 8 U.S.C. § 1427.