



U.S. Citizenship
and Immigration
Services

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FILE:

Office: CALIFORNIA SERVICE CENTER

Date:

MAR 27 2007

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:

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, California 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 Ghana on May 11, 1988. The applicant's father is a Lawful Permanent Resident (LPR) of the United States. The applicant's mother, who was also born in Ghana, became a U.S. citizen on February 11, 2004, when the applicant was fifteen years old. The applicant's parents have been married since 1979. The applicant, who is now eighteen years of age, entered the United States on August 26, 2005 and was admitted as a visitor for pleasure. The applicant was previously admitted to the United States as an LPR on September 3, 1997; however, he went back to Ghana on or about October 1, 1997 and did not return to the United States until 2005. For this reason, he was deemed to have abandoned his LPR status and was not admitted as an LPR. He has applied for a certificate of citizenship pursuant to § 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The director denied the application after concluding that the applicant had never been admitted to the United States as an LPR, as required by § 320 of the Act; 8 U.S.C. § 1431. On appeal, counsel submits a copy of the applicant's passport page showing the 1997 LPR entry stamp. Counsel also submits a copy of the applicant's social security card. The evidence on the record establishes that the applicant held LPR status in 1997, but that he abandoned his permanent residence upon his return to Ghana in 1997. On August 26, 2005, he was admitted as a visitor for pleasure allowed to stay in the United States for a six month period. Upon review of the entire record, the AAO concludes that the applicant is not eligible for U.S. citizenship.

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 twelve years old on February 27, 2001, he 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 applicant was fifteen years old when his mother became a U.S. citizen; therefore, his circumstances comply with the first and second provisions described above. Regarding the third provision, the applicant was only briefly present in the United States pursuant to admittance as an LPR when he was nine years old. The applicant never resided in the United States pursuant to a lawful admission for permanent residence since the date of his mother's naturalization. For this reason, the applicant does not meet all of the requirements specified in § 320 of the Act.

The AAO has also considered the application under the provisions of § 322 of the Act, which applies to children born and residing outside of the United States. Section 322 of the Act states, in pertinent part, that:

(a) A parent who is a citizen of the United States . . . may apply for naturalization on behalf of a child born outside of the United States who has not acquired citizenship automatically under section 320. The Attorney General [now Secretary, Homeland Security “Secretary”] shall issue a certificate of citizenship to such applicant 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 United States citizen parent--
 - (A) has . . . been physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years; or
 - (B) has . . . a citizen parent who has been physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years.
- (3) The child is under the age of eighteen years.
- (4) The child is residing outside of the United States in the legal and physical custody of the applicant
- (5) The child is temporarily present in the United States pursuant to a lawful admission, and is maintaining such lawful status.

b) Upon approval of the application (which may be filed from abroad) and, except as provided in the last sentence of section 337(a) upon taking and subscribing before an officer of the Service within the United States to the oath of allegiance required by this Act of an applicant for naturalization, the child shall become a citizen of the United States and shall be furnished by the Attorney General with a certificate of citizenship. The evidence in the record reflects that the applicant’s father resides in the United States and that the applicant resides in the physical custody of her paternal grandmother in Kenya. The applicant thus does not meet the section 322(a)(4) requirement that she reside outside of the U.S. in the physical custody of her U.S. citizen parent.

The applicant is now over the age of eighteen, and he does not reside outside the United States in his mother’s physical custody. There is also no evidence on the record that the applicant is maintaining the visitor status that he was granted upon entry on August 26, 2005. Hence, the applicant is not eligible for a certificate of citizenship under § 322 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. As explained above, the applicant has not met his burden; therefore, the appeal will be dismissed.¹

ORDER: The appeal is dismissed.

¹ The AAO decision is made without prejudice to the U.S. citizen parent’s filing a Petition for Alien Relative on the applicant’s behalf.