



U.S. Citizenship
and Immigration
Services

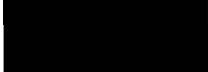
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FILE:



Office: CALIFORNIA SERVICE CENTER

Date:
MAY 29 2007

IN RE:

Applicant:



APPLICATION: Application for Certificate of Citizenship pursuant to Section 301(a)(7) of the former Immigration and Nationality Act; 8 U.S.C. § 1401(a)(7).

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 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 on January 1, 1979 in Colombia. The applicant does not assert, and the record does not support, that her natural parents were U.S. citizens. The applicant was adopted on June 30, 1986 at the age of seven. The applicant's adoptive mother, [REDACTED] was born in Switzerland on April 21, 1940, and she became a naturalized United States citizen on April 2, 1968, prior to the applicant's birth and adoption. The applicant does not assert, and the record does not reflect, that her adoptive father, [REDACTED] is a U.S. citizen. As the applicant did not acquire citizenship at birth through her natural parents, she filed a Form N-600, Application for Citizenship, to recognize her citizenship based on the fact that her adoptive mother is a U.S. citizen.

The director found that the applicant failed to show that she is eligible for a certificate of citizenship under section 321(a) of the former Act, as she failed to establish that both of her parents became naturalized U.S. citizens prior to the applicant's eighteenth birthday. *Decision of the Director*, dated May 9, 2006. The application was denied accordingly.

On appeal, the applicant describes the process leading up to the denial of her application. She states that her age was known to Citizenship and Immigration Services (CIS) from the time she filed her application, thus she expresses dismay regarding CIS's requirements for a lengthy process involving additional evidence and interview appointments when the ultimate basis for the denial could have been determined from her initial filing. *Statement from Applicant on Appeal*, dated May 31, 2006.

The record contains statements from the applicant; evidence of the applicant's mother's presence in the United States; a copy of the applicant's mother's naturalization certificate; a copy of the marriage certificate of the applicant's parents; a copy of the naturalization certificate of the applicant's sister; a copy of the applicant's permanent resident card; a copy of the applicant's Swiss passport; a copy of the applicant's mother's U.S. passport; documentation relating to the applicant's immigrant visa application in Switzerland, and; documentation relating to the applicant's adoption. The entire record was considered in rendering this decision.

Sections 320 and 322 of the former Act were amended by the Child Citizenship Act of 2000 (CCA), which took effect on February 27, 2001, and section 321 of the former Act, 8 U.S.C. § 1432, was repealed. The AAO notes that legal precedent decisions have clearly stated that the provisions of the CCA are not retroactive and that the amended provisions 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, the AAO finds that she is not eligible for the benefits of section 320 of the amended Act. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). Thus, the present application must be evaluated under sections 320 and 321 of the former Act.

It is noted that section 320 of the amended Act references section 101(b)(1)(E) of the Act, which states that the term "child" means an unmarried person under twenty-one years of age who is-

- (i) [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: Provided, That no natural parent of any such adopted child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act

Thus, under section 101(b)(1)(E) of the Act, an individual who was adopted outside the United States may qualify as the “child” of her adoptive U.S. citizen parent for the purpose of deriving citizenship. However, prior to the enactment of section 320 of the amended Act, an applicant must have met the definition of “child” found in section 101(c)(1) of the Act. Section 101(c)(1) of the Act states, in pertinent part:

The term “child” means an unmarried person under twenty-one years of age and includes . . . a child adopted in the United States, if such . . . adoption takes place before the child reaches the age of 16 years

Upon review, it is noted that the applicant was adopted outside the United States on June 30, 1986. The applicant has not submitted any evidence to show that her parents subsequently took measures in the United States to adopt her. Thus, the applicant does not qualify as the child of her U.S. citizen mother for the purpose of deriving U.S. citizenship under sections 320 and 321 of the former Act. For this reason, the application may not be approved.

Additionally, the record does not reflect that the applicant otherwise met the requirements of section 320 of the former Act, 8 U.S.C. § 1431. 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.

Former section 320 of the Act requires an applicant’s alien parent to have become a U.S. citizen prior to the applicant’s 18th birthday. Former section 320(a)(1) of the Act. However, while the applicant’s adoptive mother was a U.S. citizen prior to the applicant’s birth or adoption, the record does not show that the applicant’s father has become a U.S. citizen.

Nor does the record show that the applicant otherwise met the requirements of section 321 of the former Act. Section 321 of the former Act provided, in pertinent part:

(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.

Where an applicant's parents are not legally separated, and where both of the applicant's parents are living, section 321 of the former Act requires that both of an applicant's parents have become U.S. citizens. Section 321(a)(1) of the former Act. As noted above, the record does not show that the applicant's father has become a U.S. citizen. Accordingly, the applicant did not meet the requirement of former section 321(a)(1) of the Act.

Based on the foregoing, the applicant has not shown that she derived citizenship from her mother by operation of law, such that she is eligible for a certificate of citizenship pursuant to the present application.¹

The regulation at 8 C.F.R. § 341.2(c) states that the burden of proof shall be on the applicant to establish her claimed citizenship by a preponderance of the evidence. The applicant has not met her burden in the present matter. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.

¹ It is noted that the denial of the applicant's Form N-600 application is without prejudice, and she may apply for naturalization under section 334 of the Act.