



U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: VERMONT SERVICE CENTER Date:

**NOV 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:

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, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant was born on December 30, 1987 in Albania. The applicant's mother, [REDACTED] was naturalized on October 18, 2002, when the applicant was 14 years old. The applicant's father, [REDACTED] passed away on December 12, 2005, when the applicant was 17 years old. The applicant was admitted to the United States as a lawful permanent resident on July 11, 1996, when he was nine years old. 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 district director denied the citizenship claim upon finding that the applicant had failed to furnish evidence relating to his parents' marriage, his custody or his father's status. The district director evaluated the applicant's eligibility under section 320 of the Act, 8 U.S.C. § 1431, as well as section 321 of the former Act, 8 U.S.C. § 1432 (repealed). The district director found the applicant ineligible for citizenship under either provision and the application was denied accordingly.

On appeal, the applicant indicates that his father is deceased and his mother is the only surviving parent. *See* Statement of the Applicant on Form I-290B, Notice of Appeal or Motion. On the Form I-290B, the applicant indicated that he would be submitting a brief and/or evidence to the AAO within 30 days. The AAO has not received any additional materials from the applicant to date. The AAO will consider the application on the basis of the evidence currently in the record.

The AAO first notes that the CCA, which took effect on February 27, 2001, amended sections 320 and 322 of the Act, and repealed section 321 of the Act. The provisions of the CCA are not retroactive, and the amended provisions of section 320 and 322 of the Act apply only to persons who were not yet 18 years old as of February 27, 2001. Because the applicant was under the age of 18 on February 27, 2001, he is eligible for the benefits of section 320 of the amended Act. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). It is therefore unnecessary to evaluate his claim of citizenship pursuant to section 321 of the former Act, 8 U.S.C. § 1432.

Section 320 of the Act, 8 U.S.C § 1431, 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.
  
- (b) Subsection (a) shall apply to a child adopted by a United States citizen parent if the child satisfies the requirements applicable to adopted children under section 101(b)(1).

The Form N-600 indicates that the applicant was born on December 30, 1987 in Albania. A birth registration in the record indicates that the applicant's parents were [REDACTED] CIS records confirm that the applicant's mother naturalized on October 18, 2002, when the applicant was 14 years old. The record also contains the death certificate of [REDACTED] the applicant's father, indicating that he passed away on December 12, 2005, when the applicant was 17 years old. The record contains evidence of the applicant's admission to the United States as a lawful permanent resident on July 11, 1996, at the age of nine.

The AAO finds that the applicant acquired U.S. citizenship because, before reaching the age of 18, his mother had naturalized, he had been admitted as a lawful permanent resident, and his father had passed away, leaving her as the sole, surviving parent.

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. In order to meet this burden, the applicant must submit relevant, probative and credible evidence to establish that the claim is "probably true" or "more likely than not." *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). The AAO concludes that the applicant has met his burden to establish, by a preponderance of the evidence, that he acquired U.S. citizenship upon his mother's naturalization. The appeal will therefore be sustained.

**ORDER:** The appeal is sustained.