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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:

Office: PHILADELPHIA, PA

Date: NOV 27 2007

IN RE:

Applicant:

APPLICATION: Application for Certificate of Citizenship under former 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 District Director, Philadelphia, Pennsylvania. The matter is now before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The applicant was born on December 12, 1970 in the Philippines. The applicant's mother, [REDACTED] was born in the Philippines and became a naturalized United States (U.S.) citizen on February 17, 1989. The applicant asserts that his natural parents were never married. The applicant was admitted to the United States as a lawful permanent resident on October 22, 1989. The applicant seeks a certificate of citizenship under section 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The district director found that the applicant had not been admitted to the United States prior to his 18th birthday and that neither of his parents, who had married on February 10, 1969 had obtained citizenship prior to his 18th birthday, as required to satisfy section 321(a) of the Act. The district director denied the application accordingly.

On appeal, the applicant asserts that he was born to his mother out of wedlock and, therefore, acquired U.S. citizenship at the time of her 1989 naturalization. He also contends that his admission to the United States occurred in 1987 when he was 16 years of age, rather than in 1989. The applicant submits evidence to establish that his parents were never married and that he entered the United States in 1987.

The section of law under which the applicant seeks to establish U.S. citizenship was repealed by the Child Citizenship Act of 2000 (CCA), effective as of February 27, 2001.¹ However, any person who would have acquired automatic citizenship under its provisions prior to February 27, 2001 may apply for a certificate of citizenship at any time. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). Therefore, the issue before the AAO is whether the applicant has established that he acquired U.S. citizenship under the provisions of section 321(a)(3) of the Act prior to February 27, 2001.

Former section 321 of the Act, 8 U.S.C. § 1432, provided that:

(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

¹ The CCA benefits all persons who had not yet reached their eighteenth birthdays as of February 27, 2001. As the applicant was 30 years old on February 27, 2001, he is not eligible for CCA consideration.

(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.

The record contains a birth certificate for the applicant that identifies his parents as [REDACTED] and [REDACTED] and records his birth as legitimate and the date of his parents' marriage as February 10, 1969. On appeal, the applicant contends that this document's report of his parents' marriage is an error and that he was born out of wedlock. In support of his claim, he submits sworn statements from his mother and father, each of whom attest that they were never married to each other, and a copy of a December 31, 1966 marriage contract for [REDACTED] and [REDACTED] issued by the Philippine National Statistics Office. The AAO notes that the Form N-400, Application to File Petition for Naturalization, filed by the applicant's mother in 1985 indicates a single previous marriage to a [REDACTED], a marriage that ended in divorce.

Based on the record before it, the AAO finds the applicant to have established by a preponderance of evidence that his parents were not married at the time of his birth. The applicant has submitted proof that his father married [REDACTED] on December 31, 1966. In that the Philippine Civil Code adopted in 1950 and the Family Code that amended it in 1987 emphasize the permanent nature of marriage and do not provide for divorce between citizens of the Philippines, the AAO finds the marriage of the applicant's father to [REDACTED] in 1966 to demonstrate that his parents were not married at the time of his birth.² Moreover, the applicant's mother would only have been 13 years of age on the reported date of her 1969 marriage and, therefore, under Philippine law, ineligible to marry.³ In that the record provides no evidence to indicate that the applicant's father legitimated him prior to his 18th birthday, the AAO finds the applicant to have met the requirements of section 321(a)(3) of the Act and turns to a consideration of the requirements of sections 321(a)(4) and (5) of the Act.

² The Philippine Civil Code enacted on June 18, 1949 and in effect at the time of the applicant's birth did not allow for divorce. In *Matter of S— and L— and P—*, 8 I&N Dec. 177 (BIA 1958), the Board of Immigration Appeals noted that "With the enactment of the new Civil Code, absolute divorce . . . has been eliminated in the Philippines; only legal separation—otherwise known as relative divorce, legal separation or divorce *a mensa et thoro* (from bed and board)—by judicial intervention, can be resorted to by spouses. The AAO notes that a marriage could be annulled under the Civil Code if one of six grounds existed at the time of the marriage: absence of parental consent if required; a presumed-dead spouse was found to be alive; either party was of unsound mind; the consent of either party to the marriage had been obtained by fraud; the consent of either party had been obtained by force or intimidation; or either party was physically incapable of entering into marriage. See BVA 9420838, Docket No. 92-09431, <http://www.va.gov/vetapp/files3/9420838.text>. The record, however, offers no indication that any of these grounds would have applied to the marriage of the applicant's father to [REDACTED]t. Moreover, even if his marriage had been annulled, in 1969, the applicant's mother, as noted above, had not reached the age of consent for marriage.

³ Under the Philippine Civil Code, the age of consent for marriage in 1969 for females was 14 years; girls 14 to 19 years of age also required parental consent (Article 85). See Myrna S. Feliciano, "Law, Gender, and the Family in the Philippines," *Law & Society Review*, Vol. 28, No. 3 (1994); see also BVA 9420838, Docket No. 92-09431, *supra*.

To satisfy the requirements of section 321(a)(4) and (5), the applicant must establish that he was under 18 years of age at the time of his mother's naturalization and his admission to the United States as a lawful permanent resident. To establish that he was under the age of 18 years when he entered the United States, the applicant submits a copy of his resident alien card as evidence of a 1987 admission to the United States. The card, however, indicates that the applicant was admitted to the United States as a lawful permanent resident on October 22, 1989. Further proof that the applicant could not have entered the United States as a lawful permanent resident in 1987 is provided by the Form I-130, Petition for Alien Relative, filed by the applicant's mother on his behalf, which was not approved until June 11, 1989. The record also indicates that the applicant did not submit an Application for Immigrant Visa and Alien Registration to the U.S. Embassy in Manila until September 28, 1989. In that the applicant could not have been admitted to the United States as a lawful permanent resident prior to the approval of his immigrant visa application, he could not have come to the United States as a lawful permanent resident in 1987.

At the time of the applicant's October 22, 1989 admission to the United States, he was 18 years old. Moreover, the applicant had also reached 18 years of age prior to his mother's naturalization on February 17, 1989. In that the applicant was over 18 years of age on the date that his mother became a U.S. citizen, he cannot satisfy the requirement for a certificate of citizenship under section 321(a)(4) of the Act. As he was 18 years old at the time he entered the United States as a lawful permanent resident, he has also failed to establish that he is eligible for a certificate of citizenship under section 321(a)(5) of the Act.

For the reasons previously discussed, the applicant has not established that he is eligible for a certificate of citizenship. Accordingly, the appeal will be dismissed.

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden.

ORDER: The appeal is dismissed.