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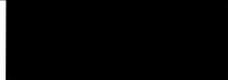
U.S. Citizenship
and Immigration
Services

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FILE:



OFFICE: MIAMI, FL
(TAMPA, FL SUB-OFFICE)

DATE: JAN 24 2008

IN RE:



APPLICATION: Application for Certificate of Citizenship on Behalf of Adopted Child 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Miami, Florida (Tampa, Florida Sub-office), and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the application will be denied.

The applicant was born on August 23, 1989 in Poland. The record reflects that the applicant's mother was born in Poland, and that she is not a U.S. citizen. The applicant's mother married a U.S. citizen () in April 1994, and the applicant was legally adopted by () on May 21, 2001, when he was eleven years old. () filed a Form N-643, Application for Certificate of Citizenship on Behalf of Adopted Child (N-643 application) on the applicant's behalf on October 16, 2002, pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The district director determined that the applicant was not eligible for U.S. citizenship under section 320 of the Act, because he had not been in the legal custody of his U.S. citizen father for at least two years, as required by section 101(b)(1)(E)(i) of the Act, 8 U.S.C. § 1101(b)(1)(E)(i). The district director determined that the applicant therefore failed to meet the definition of an adopted child for section 320 of the Act purposes. The application was denied accordingly.

Through his adoptive father, the applicant indicates on appeal that he was legally adopted by () on May 21, 2001, and that he is thus eligible for U.S. citizenship under section 320 of the Act. The applicant resubmits evidence of his adoption to support his claim.

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.*

(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).*

(Emphasis added.) Section 101(b)(1)(E) of the Act states, in pertinent part, 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. . . .*

(Emphasis added.) The AAO notes that the two-year residence requirement set forth in section 101(b)(1)(E)(i) of the Act may be satisfied either before or after an adoption. *Matter of Repuyan*, 19 I&N Dec. 119, 120 (BIA 1984). Legal custody, however, vests "by virtue of either a natural right or a court

decree.” *Matter of Harris*, 15 I&N Dec. 39 (BIA 1970). In the present case, [REDACTED] obtained legal custody over the applicant through a court ordered adoption decree, dated May 21, 2001. The applicant’s N-643 application was filed less than two years later, on October 16, 2002. The district director’s decision was issued less than two years later on February 24, 2003.

The requirements for U.S. citizenship, as set forth in the Act, are statutorily mandated by Congress, and U.S. Citizenship and Immigration Services (CIS) lacks authority to issue a certificate of citizenship when an applicant fails to fully meet statutory provisions for U.S. citizenship. *Iddir v. INS*, 301 F.3d 492 (7th Cir. 2002). In the present matter, the evidence in the record clearly reflects that applicant was not in the legal custody of his U.S. citizen adoptive father for two years prior to the filing of his N-643 application, and prior to the issuance of the district director’s decision. Because the applicant did not meet the legal custody requirements set forth in section 101(b)(1)(E)(i) of the Act, he did not qualify as an adopted child. Accordingly, the applicant was correctly found to be ineligible for citizenship under section 320 of the Act.

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. The applicant did not meet his burden of proof in the present matter. The appeal will therefore be dismissed and the application will be denied.

ORDER: The appeal is dismissed. The application is denied.¹

¹ The present decision is without prejudice to the applicant’s filing a Form N-400, Application for Naturalization pursuant to section 316 of the Act, 8 U.S.C. § 1427, if eligible.