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U.S. Citizenship
and Immigration
Services

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FILE:

Office: NEW YORK, NY

Date: **MAR 24 2008**

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 District Director, New York, New York. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on April 10, 1990 in China. The applicant's parents, as reflected in his birth certificate, are [REDACTED] and [REDACTED]. The applicant's parents became U.S. citizens upon their naturalization on August 9, 2006 and October 24, 2006, respectively. The applicant was admitted to the United States as a lawful permanent resident on January 19, 2004. The applicant seeks a certificate of citizenship pursuant to section 320 of the Immigration and Naturalization Act (the Act), 8 U.S.C. § 1431, claiming that he acquired U.S. citizenship upon his mother's naturalization.

The district director denied the applicant's citizenship claim finding that he was not residing in the legal and physical custody of a U.S. citizen parent. The director noted a discrepancy in the birth certificates submitted by the applicant and found the documents to be fraudulent. The application was denied accordingly.

On appeal, the applicant explains that the discrepancy in the date of birth in the birth certificate was a result of a clerical error. The applicant further maintains that he has been in the physical and legal custody of his U.S. citizen mother for 158 days since her naturalization (94 of them in the United States). *See Applicant's Mother's Statement on Appeal.*

Section 320 of the Act, 8 U.S.C. § 1431, was amended by the Child Citizenship Act of 2000 (CCA), and took effect on February 27, 2001. The CCA benefits all persons who have not yet reached their eighteenth birthdays as of February 27, 2001. Because the applicant was under the age of 18 on February 27, 2001, he meets the age requirement for benefits under the CCA.

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 record reflects that on the date of the applicant's mother's naturalization, the applicant was under the age of 18 and that the applicant was admitted to the United States as a lawful permanent resident at the age of 13. The evidence in the record, however, is insufficient to establish that the applicant was in his mother's legal and physical custody on or after August 9, 2006.

The AAO notes that the record includes a letter from the Long Island Business Institute stating that the applicant would be enrolled starting in May 2007. The applicant did not submit additional evidence on appeal indicating that he was in fact already enrolled, as stated in the letter. The record also includes a letter from the American Cancer Society verifying that the applicant volunteered with the organization between June and August 2006. The letter does not contain the applicant's address, nor does it indicate when in August the applicant's volunteer work ended. There is also a copy of the applicant's parents' 2005 Income Tax Return in the record. The documents submitted fail to establish that the applicant was in his mother's legal and physical custody on or after August 9, 2006.

A person may only obtain citizenship in strict compliance with the statutory requirements imposed by Congress. *INS v. Pangilinan*, 486 U.S. 875, 885 (1988). Even courts may not use their equitable powers to grant citizenship, and any doubts concerning citizenship are to be resolved in favor of the United States. *Id.* at 883-84; *see also United States v. Manzi*, 276 U.S. 463, 467 (1928) (stating that "citizenship is a high privilege, and when doubts exist concerning a grant of it ... they should be resolved in favor of the United States and against the claimant"). Moreover, "it has been universally accepted that the burden is on the alien applicant to show his eligibility for citizenship in every respect." *Berenyi v. District Director, INS*, 385 U.S. 630, 637 (1967).

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 applicant has failed to meet his burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.