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U.S. Department of Homeland Security
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Washington, DC 20536



**U.S. Citizenship
and Immigration
Services**

[REDACTED]

FILE:

[REDACTED]

Office: ST. PAUL, MN

Date:

MAR 29 2004

IN RE:

Applicant:

[REDACTED]

APPLICATION:

Cancellation of Certificate of Citizenship pursuant to Section 342 of the Immigration and Nationality Act, 8 U.S.C. § 1453.

ON BEHALF OF APPLICANT:

[REDACTED]

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 District Director, St. Paul, Minnesota, cancelled the applicant's Certificate of Citizenship on April 21, 2003. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant was born on June 30, 1981, in Benin City, Nigeria. He applied for derivative U.S. citizenship on August 20, 1996, based on the claim that his natural father, [REDACTED], died in Nigeria on September 6, 1983, and that he was subsequently cared for and adopted by his paternal uncle, [REDACTED], on December 14, 1992. See Nigerian Adoption Decree stating that [REDACTED] adopted the eight children of his late brother [REDACTED] who died on September 6, 1983. See also, December 9, 1992, Affidavit by [REDACTED] stating that he is the father of [REDACTED] and that [REDACTED] took full responsibility for his deceased brother's [REDACTED] children. The record reflects that the applicant obtained derivative citizenship pursuant to section 321 of the former Immigration and Nationality Act (former Act), 8 U.S.C. § 1432, when his adoptive father, [REDACTED], became a naturalized U.S. citizen on April 19, 1995.¹

¹ The AAO notes the applicant's N-600 states that he:

[D]erived United States Citizenship on 4/19/95 on which date [he] was a lawful permanent resident of the United States and under 18 years of age having been adopted while under the age of 16 years, his adoptive father, mother, parents having been citizens of the United States through naturalization.

Section 321(a) of the former Act states that:

A child born outside of the United States of alien parents . . . becomes a citizen of the United States upon fulfillment of the following conditions:

- (1) The naturalization of both parents . . . and if;

...

- (4) Such naturalization takes place while such child is under the age of eighteen 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 (1) of this subsection, or the parent naturalized under clause (2) or (3) of this subsection, or thereafter begins to reside permanently in the United States while under the age of eighteen years.

Section 101(c) of the Act states, in pertinent part, that:

- (1) 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 (except to the extent that the child is described in subparagraph (E)(ii) or (F)(ii) of subsection (b)(1)), and the child is in the legal custody of the adopting parent or parents at the time of such adoption.

Section 101(b) of the Act states in pertinent part that the term "child" is defined as:

The record reflects that on January 29, 2002, the U.S. District Court, District of Minnesota (U.S. District Court), concluded in an Order of Detention against the applicant, that, through the presentation of evidence, personal witness testimony, Immigration Service and U.S. Secret Service, Special Agent testimony, "[a]t the detention hearing, the government presented substantial evidence that [REDACTED] is not the father of the defendant and that the defendant's derivative citizenship was therefore fraudulently obtained." See Order of Detention at 2. The Court additionally found that the applicant, "[m]isrepresented his true parentage to the INS in order to obtain his citizenship." See *id.* at 5.

In an August 20, 2002, Notice of Intent to Cancel the Applicant's Certificate of Citizenship (NOIC), the district director stated that information obtained from U.S. District Court criminal case records against the applicant reflected that the applicant had misrepresented parentage information on his N-600, Application for Certificate of Citizenship. The NOIC stated that, based on the evidence contained in the record, the applicant's natural father, [REDACTED] was alive and living in Nigeria, and that the applicant was fraudulently adopted by his brother [REDACTED] so that he could obtain a certificate of citizenship in the United States.

In response to the NOIC, the applicant asserted that his adoption by [REDACTED] was legal and proper. The applicant reasserted that [REDACTED] was his natural father, who had died in 1983. The applicant asserted that [REDACTED] was his paternal grandfather rather than his natural father, and that [REDACTED] died in February 2002. In addition, the applicant asserted that the U.S. District Court testimony of [REDACTED] wife, [REDACTED] regarding the parentage of the applicant was not credible.

The district director determined that the response to the NOIC, and the evidence submitted by the applicant, failed to overcome evidence contained in the record that the applicant had obtained his certificate of citizenship through fraud. The district director referred to the following documents submitted by the applicant in response to the Notice of Intent to Cancel his Certificate of Citizenship:

2. A death certificate for [REDACTED] issued October 16, 2002, for a death that occurred on 02-08-2002.
3. An application for a compound burial permit dated 04-15-2002.
4. An affidavit of death, dated August 29, 2002, signed by [REDACTED]

(E) (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; or

(ii) subject to the same proviso as in clause (i), a child who: (I) is a natural sibling of a child described in clause (i) or subparagraph (F)(i); (II) was adopted by the adoptive parent or parents of the sibling described in such clause or subparagraph; and (III) is otherwise described in clause (i), except that the child was adopted while under the age of 18 years;

The record indicates that [REDACTED] was married to [REDACTED] a U.S. citizen, at the time of his naturalization, and that she was considered the adoptive mother of the applicant. The applicant therefore derived citizenship under section 321(a)(1) of the former Act.

5. A letter dated 02-14-2002, written by [REDACTED] to [REDACTED]
6. A police report dated 03-27-1996 claiming that [REDACTED] and [REDACTED] were attempting to pick up the nieces and nephews of [REDACTED]
7. An embalming receipt dated 02-08-2002.
8. A color copy computer generated obituary notice regarding the late [REDACTED]
9. A statement of a Senior Registrar attesting to the absolute and final adoption decree.

The district director concluded that the information contained in the police report contradicted Immigration Service records, and that the affidavits and documents provided were self-serving and provided little evidentiary value in light of the Immigration Service's investigation, and in light of the contrary evidence contained in the record. The district director subsequently cancelled the applicant's certificate of citizenship on April 21, 2003, and ordered him to surrender his certificate of citizenship to the St. Paul, Minnesota, District Office.

On appeal, counsel asserts that the Immigration Service does not have jurisdiction to institute denaturalization proceedings against the applicant, and that accordingly, the present proceedings have the effect only of canceling the applicant's certificate of citizenship, and not of canceling his status as a U.S. citizen. Counsel asserts further that the applicant's due process rights were violated because he was not provided with an opportunity to appear in person before the Immigration Service. In addition, counsel asserts that the Immigration Service failed to consider favorable evidence presented by the applicant establishing that he was legally adopted by Williams Falodun, and that the adoption was obtained without fraudulent intent.

Section 342 of the Act, 8 U.S.C. §1453 states:

The Attorney General [now, Secretary, Homeland Security, "Secretary"] is authorized to cancel any certificate of citizenship, certificate of naturalization, copy of a declaration of intention, or other certificate, document or record heretofore issued or made by the Commissioner or a Deputy Commissioner or hereafter made by the Attorney General [Secretary] if it shall appear to the Attorney General's [Secretary's] satisfaction that such document or record was illegally or fraudulently obtained from, or was created through illegality or by fraud practiced upon, him or the Commissioner or a Deputy Commissioner; but the person for or to whom such document or record has been issued or made shall be given at such person's last-known place of address written notice of the intention to cancel such document or record with the reasons therefor and shall be given at least sixty days in which to show cause why such document or record should not be canceled. The cancellation under this section of any document purporting to show the citizenship status of the person to whom it was issued shall affect only the document and not the citizenship status of the person in whose name the document was issued.²

² The AAO notes that under section 340 of the Act, 8 U.S.C. § 1451, only U.S. district courts have jurisdiction over revocation of naturalization cases. Counsel's assertion regarding the limits of Immigration Service jurisdiction in revocation of U.S. citizenship cases is therefore correct.

Section 340 states in pertinent part that:

- (a) It shall be the duty of the United States attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any district court of the United States in the judicial district in which the naturalized citizen may reside at the time of bringing suit, for the

The regulation at 8 C.F.R. § 342.1 states:

If it shall appear to a district director that a person has illegally or fraudulently obtained or caused to be created a certificate, document, or record described in section 342 of the Act, a notice shall be served upon the person of intention to cancel the certificate, document, or record. The notice shall contain allegations of the reasons for the proposed action and shall advise the person that he may submit, within 60 days of service of the notice, an answer in writing under oath or affirmation showing cause why the certificate, document, or record should not be canceled, that he may appear in person before a naturalization examiner in support of, or in lieu of his written answer, and that he may have present at that time, without expense to the Government, an attorney or representative qualified under Part 292 of this chapter. In such proceedings the person shall be known as the respondent.

The Ninth Circuit Court of Appeals decision, *Friend v. Reno*, 172 F.3d 638, 648 (1999) stated:

[T]he Supreme Court has stated plainly that when one of the strict prerequisites for Congressionally-conferred citizenship has not been satisfied, a certificate of citizenship has been illegally procured. Administrative regulations state in mandatory language that, “[i]f it shall appear to a district director that a person has illegally or fraudulently obtained or caused to be created a certificate . . . described in section 342 of the Act, a notice shall be served upon the person of intention to cancel the certificate” As a result, once the Attorney General [Secretary] discovered that the certificate of citizenship had been issued in error, she had a duty to institute cancellation proceedings. (Citations omitted).

The Ninth Circuit Court of Appeals clarified further that, “[a] certificate is illegally procured if it is later determined that an essential finding of fact in the naturalization proceeding was erroneous. This holding is in keeping with the general principle that no alien has the slightest right to naturalization unless all statutory requirements are complied with, and that Congress has the right not to grant a United States citizen the right to transmit citizenship by descent.” See *Friend* at 646-47. (Citations and quotations omitted).

The AAO finds that the evidence contained in the record supports the conclusion that the applicant obtained his Certificate of U.S. Citizenship illegally or through fraud. The AAO is unconvinced by counsel’s assertion that the applicant was not given the opportunity to appear in person to provide evidence or testimony on his behalf, and that his due process rights were violated. The NOIC sent to the applicant clearly reflects that the applicant was notified of his opportunity to file an answer in writing within 60 days, and of his option to “[w]ithin a 60-day period, request to appear before an officer of this Service in support of [his] written answer or in lieu of a written answer.” See August 20, 2002, NOIC. The AAO finds that the NOIC sent to the applicant conformed with the procedures set forth in 8 C.F.R. § 342, and the record reflects that the applicant

purpose of revoking and setting aside the order admitting such person to citizenship and canceling the certificate of naturalization on the ground that such order and certificate of naturalization were illegally procured or were procured by concealment of a material fact or by willful misrepresentation.

did not request to appear in person before the Immigration Service. Moreover, the record reflects that in February 2003, the applicant was sentenced to approximately 15 years imprisonment. He therefore could not have appeared before the Immigration Service within 60 days of receiving the NOIC, even if such a request had been made.

The AAO also disagrees with counsel's assertion that the Service made "[u]nfounded references to individuals whom Mr. [REDACTED] did not cross-examine, evaluate their motivation for their testimony, etc." See Appeal Brief at 3. The district director's NOIC and Decision clearly reflect that information was obtained from records relating to the applicant's U.S. District Court criminal case. The U.S. District Court, District of Minnesota, Order of Detention clearly reflects that the evidence presented and the witness testimony of Service Special Agent [REDACTED] U.S. Secret Service, Special Agent [REDACTED] and [REDACTED] ex-wife, [REDACTED] were subjected to examination and cross-examination by the applicant's attorney during the District Court proceedings.

The AAO finds that the district director fully examined and analyzed the evidence obtained from the applicant's U.S. District Court proceedings, as well as the evidence presented by the applicant in response to the NOIC. The AAO notes that the adoption decree granting adoption of the applicant to [REDACTED] was granted on the basis that he was the brother of the applicant's alleged father, [REDACTED] who died on 6th September 1983, and on the basis that he had been caring for and nurturing [REDACTED] children since the death of their father. See December 14, 1992, Benin City, Nigeria, Adoption Decree. The AAO finds that the evidence contained in the record supports the district director's conclusion that the applicant's father is [REDACTED] rather than [REDACTED] and that [REDACTED] was not deceased at the time of the applicant's adoption by [REDACTED]. The evidence and witness testimony contained in the record further support the conclusion that [REDACTED] was the son of [REDACTED] rather than the brother of [REDACTED] and that the applicant's adoption was illegally and fraudulently procured in order to obtain a certificate of U.S. citizenship for the applicant. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.