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U.S. Citizenship
and Immigration
Services

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FILE: [redacted] Office: NEW YORK, NY Date: MAY 13 2004

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship under section 322 of the former Immigration and Nationality Act, 8 U.S.C. § 1433.

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, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant was born on November 6, 1982, in Pakistan. The record indicates that the applicant's father, was born in Pakistan on July 19, 1943, and that he became a naturalized U.S. citizen on June 27, 1996. The applicant's mother was born in Pakistan and is not a U.S. citizen. The applicant's parents were married in December 1964. The applicant was admitted into the United States as a lawful permanent resident on October 2, 1999, when she was 16 years old. She seeks a certificate of citizenship pursuant to section 322 of the former Immigration and Nationality Act (the former Act), 8 U.S.C. § 1433.

The district director concluded that the applicant was statutorily ineligible for a certificate of citizenship under section 320 of the present Immigration and Nationality Act (the amended Act) because she was over the age of eighteen on the date of the amended provision took effect on February 27, 2001. The application was denied accordingly. The district director did not adjudicate the applicant's citizenship application pursuant to the automatic citizenship provisions contained in the Immigration and Nationality Act, as it existed prior to February 27, 2001.

On appeal, the applicant, through her father, asserts that she filed her citizenship application prior to her 18th birthday and that she qualified for citizenship under section 322 of the former Act at the time that she filed her application. The applicant indicates that she should not be penalized for the processing delays of the Immigration and Naturalization Service (Service, now, Citizenship and Immigration Services, CIS), and that she is entitled to citizenship under section 322 of the former Act.

The Child Citizenship Act of 2000 (CCA) amended section 320 of the former Act, and presently allows a child born outside of the U.S. to automatically become a citizen of the United States upon fulfillment of the following conditions:

> (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.

The amended provisions of section 320 are not retroactive and apply only to persons who were not yet 18-years-old as of February 27, 2001. *See Matter of Rodriguez-Tejedor,* 23 I&N Dec. 153 (BIA 2001). The district director therefore correctly concluded that because the applicant was over the age of 18, on February 27, 2001, she was not eligible for the benefits of section 320 of the amended Act. The AAO finds that the district director erred, however, in not also adjudicating the applicant's application pursuant to automatic citizenship provisions contained in the former Act.

Section 322 of the former Act stated, in pertinent part:

> (a) Application of citizen parents; requirements
>
> A parent who is a citizen of the United States may apply to the Attorney General [now the Secretary, Homeland Security, "Secretary"] for a certificate of citizenship on behalf of a child born outside the United States. The Attorney General [Secretary] shall issue

such a certificate of citizenship upon proof to the satisfaction of the Attorney General [Secretary] that the following conditions have been fulfilled:

1) At least one parent is a citizen of the United States, whether by birth or naturalization.
2) The child is physically present in the United States pursuant to a lawful admission.
3) The child is under the age of 18 years and in the legal custody of the citizen parent.

. . . .

b) Attainment of citizenship status; receipt of certificate

Upon approval of the application . . . [and] upon taking and subscribing before an officer of the Service [CIS] within the United States to the oath of allegiance required by this chapter of an applicant for naturalization, the child shall become a citizen of the United States and shall be furnished by the Attorney General [Secretary] with a certificate of citizenship.

The AAO notes that although the record reflects that the applicant satisfied the requirements set forth in section 322(a) of the former Act, the applicant nevertheless failed to establish that her application was approved by the Service (CIS) or that she took an oath of allegiance prior to her eighteenth birthday, as required by section 322(b) of the former Act. The AAO notes further that the requirements set forth in section 322(b) of the former Act are statutorily mandated, and that they are not affected or changed due to processing delays by the Service (CIS). Accordingly, the AAO finds that the applicant failed to establish that she qualifies for citizenship under section 322 of the former Act.

The AAO additionally notes that the applicant does not qualify for citizenship pursuant to section 321, 8 U.S.C. § 1432, and section 320, 8 U.S.C. § 1431, of the former Act.

Former section 320 of the Act provided that:

(a) A child born outside of the United States, one of whose parents at the time of the child's birth was an alien and the other of whose parents then was and never thereafter ceased to be a citizen of the United States, shall, if such parent is naturalized, become a citizen of the United States, when

(1) such naturalization takes place while such child is under the age of 18 years; and

(2) such child is residing in the United States pursuant to a lawful admission for permanent residence at the time of naturalization or thereafter and begins to reside permanently in the United States while under the age of 18 years.

Neither of the applicant's parents were U.S. citizens at the time of her birth. The applicant therefore does not qualify for consideration under former section 320 of the Act.

Former section 321 of the Act provided, in pertinent part, 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

(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 applicant does not qualify for consideration under former section 321 of the Act. The applicant failed to establish that her mother is a naturalized U.S. citizen, or that she otherwise meets the requirements set forth in section 321 of the former Act.

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 this case, the burden has not been met. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.