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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: NEW YORK, NEW YORK Date: APR 22 2004

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship pursuant to Section 320 of the former 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, 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 sustained.

The applicant was born on November 20, 1981, in Quezon City, Philippines. The record reflects that the applicant's mother derived U.S. citizenship at birth through her mother and that she obtained a U.S. passport on December 16, 1986. The record reflects that the applicant's father became a naturalized U.S. citizen on August 23, 1991, when the applicant was 9 years old. The applicant's parents were married on April 18, 1981. The record indicates that the applicant was admitted into the United States as a lawful permanent resident on May 25, 1988. The applicant seeks a certificate of citizenship pursuant to section 320 of the former Immigration and Nationality Act (the former Act), 8 U.S.C. § 1431.[1]

The district director determined that the applicant was over eighteen on February 27, 2001, and that he thus had failed to meet the requirements for establishing automatic citizenship under section 320 of the Act, as amended by the Child Citizenship Act of 2000. The application was denied accordingly.

On appeal, the applicant asserts that his mother was a derivative U.S. citizen at the time of his birth, and that his father became a naturalized U.S. citizen in 1991, when the applicant was 9 years old. The applicant asserts that he therefore meets the requirements for a certificate of U.S. citizenship. The applicant submits a copy of an unclassified December 1986, U.S. Department of State telegram finding the applicant's mother had submitted sufficient evidence to establish her claim to U.S. citizenship at birth under section 301(a)(7) of the former Act, 8 U.S.C. § 1401(a)(7). The applicant additionally submits a copy of his mother's United States passport, issued in December 1986, and reissued in August 1998, a copy of his father's certificate of naturalization, issued on August 23, 1991, and copies of two of his brother's certificates of citizenship,

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[1] The applicant asserts on appeal that he is applying for a certificate of citizenship pursuant to section 341 of the Act, 8 U.S.C. §1452. The AAO notes that section 341 of the Act does not set forth the requirements for establishing derivative citizenship under the Act. Rather, section 341 is a procedural provision that states:

SEC. 341 - CERTIFICATES OF CITIZENSHIP OR U.S. NON-CITIZEN NATIONAL STATUS; PROCEDURE

> (a) A person who claims to have derived United States citizenship through the naturalization of a parent or through the naturalization or citizenship of a husband, or who is a citizen of the United States by virtue of the provisions of section 1993 of the United States Revised Statutes, or of section 1993 of the United States Revised Statutes, as amended by section 1 of the Act of May 24, 1934 (48 Stat. 797), or who is a citizen of the United States by virtue of the provisions of subsection (c), (d), (e), (g), or (i) of section 201 of the Nationality Act of 1940, as amended (54 Stat. 1138; 8 U.S.C. 601), or of the Act of May 7, 1934 (48 Stat. 667), or of paragraph (c), (d), (e), or (g) of section 301 of this title, or under the provisions of the Act of August 4, 1937 (50 Stat. 558), or under the provisions of section 203 or 205 of the Nationality Act of 1940 (54 Stat. 1139; 8 U.S.C. 603, 605), or under the provisions of section 303 of this title, may apply to the Attorney General [now Secretary, Homeland Security, "Secretary"] for a certificate of citizenship. Upon proof to the satisfaction of the Attorney General [Secretary] that the applicant is a citizen, and that the applicant's alleged citizenship was derived as claimed, or acquired, as the case may be, and upon taking and subscribing before a member of the Service within the United States to the oath of allegiance required by this Act of an applicant for naturalization, such individual shall be furnished by the Attorney General [Secretary] with a certificate of citizenship, but only if such individual is at the time within the United States.

Under section 320, of the former Act, the automatic citizenship provision in effect prior to February 27, 2001:

> (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
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> > (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.

The evidence in the record establishes that the applicant's mother was a U.S. citizen at the time of the applicant's birth, and that his father became a naturalized U.S. citizen in 1991, when the applicant was 9 years old. The record additionally establishes that the applicant was admitted into the United States as a lawful permanent resident on May 25, 1988, when he was 6 years old, and that he resided in the U.S. permanently at the time of his father's naturalization in 1991. The applicant therefore established that he obtained automatic U.S. citizenship at the time of his father's naturalization in 1991, and that he qualifies for a certificate of citizenship pursuant to section 320 of the former Act. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.