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U.S. Citizenship and Immigration Services

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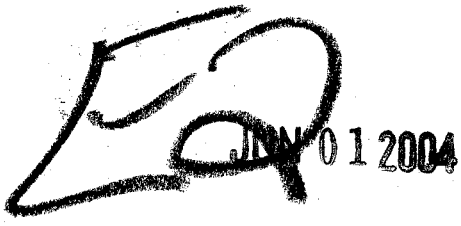

JAN 01 2004

[redacted]

FILE: [redacted] Office: NEW YORK, NY Date:

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship under Section 321 of the Immigration and Nationality Act; 8 U.S.C. § 1432.

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 waiver application was denied by the Interim District Director, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded to the Interim District Director for further action consistent with this decision.

The information contained on the applicant's N-600, Application for Certificate of Citizenship (N-600 application) indicates that the applicant was born in Yemen on October 15, 1979. The N-600 application indicates that the applicant's father was born in Yemen, and that he became a naturalized U.S. citizen on November 22, 1978. The N-600 application indicates that the applicant's mother was born in Yemen and had no claim to U.S. citizenship. The N-600 application indicates further that the applicant's parents were married in July 1966, and that the applicant's mother died on October 20, 1988. The applicant was lawfully admitted for permanent residence in the United States on August 5, 1997. He is seeking a certificate of citizenship pursuant to section 321 of the former Immigration and Nationality Act (the former Act), 8 U.S.C. § 1432.

The interim district director (IDD) concluded that the Yemeni birth, death and marriage documentation submitted by the applicant was fraudulent, and that the applicant had therefore failed to establish that he qualified for a certificate of citizenship. The application was denied accordingly.[1]

Specifically, the IDD stated:

> [Y]ou submitted documentation in support of your application in the form of a birth, marriage and death certificate from Yemen along with related translations of the same. These documents cannot be used to establish the paternal relationship needed for the benefit you

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[1] The IDD states that the certificate of citizenship provision applicable to the applicant's case is section 320 of the Immigration and Nationality Act (the Act). Section 320 of the Act 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 birthday as of February 27, 2001. The applicant was twenty-one years old on February 27, 2001. He is therefore not eligible for the benefits of the CCA. Instead, the applicant's eligibility for a certificate of citizenship would be assessed pursuant to provisions set forth under section 321 of the former Act. Section 321 of the former Act stated in pertinent part that::

> (a) 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; 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 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.

> seek in your application. Based on information received from the American Consulate in Yemen there is a prevalence of legitimately issued documents based on fictitious or inaccurate information being issued by that government and this fact has been acknowledged and affirmed by the Yemeni Civil Authorities. Therefore, at this time no credibility or weight may be given to such documentation in general, and in your case specifically. As there are no reliable documents to establish your paternal relationship your application is herein DENIED as a matter of law.

See Interim District Director Decision, dated May 29, 2003.

On appeal, counsel asserts that the New York Citizenship and Immigration Services (CIS) office unconstitutionally violated the applicant's civil and equal protection rights by applying a generalized policy in his case, by not giving him an opportunity to supply secondary evidence and by failing to explain to the applicant why his particular documentation was rejected. Counsel asserts that the authenticity of the applicant's supporting documentation was accepted by the Immigration and Naturalization Service when the applicant immigrated to the U.S. through his father in 1997. Counsel asserts further that the applicant submitted DNA evidence to the New York CIS office confirming his father's paternity, and counsel states that the existence of DNA evidence should be acknowledged by the New York CIS office and addressed in the interim district director's decision. Counsel concludes that the applicant meets all of the requirements for a certificate of citizenship, and that because the interim district director's decision "failed to state with specificity any problem with the documentation submitted by the applicant" the application for a certificate of citizenship should be approved

8 C.F.R. § 103.3(a)(1)(i) states in pertinent part:

> (a) Denials and appeals – (1) General –
>
> > (i) [W]hen a Service officer denies an application or petition filed under § 103.2 of this part, the officer shall explain in writing the specific reasons for denial.

8 C.F.R. § 320.5 states in pertinent part:

> (b) [I]f the decision of the district director is to deny the application for a certificate of citizenship under this section, the applicant shall be furnished with the reasons for denial and advised of the right to appeal in accordance with the provisions of 8 C.F.R. 103.3(a).

The AAO finds that the IDD's decision did not explain specific reasons for its denial of the applicant's certificate of citizenship. The IDD's decision states that the American Consulate in Yemen provided information that, "there is a prevalence of legitimately issued documents based on fictitious or inaccurate information being issued by that government", and that "this fact has been acknowledged and affirmed by the Yemeni Civil Authorities." The IDD provides no other explanation or basis for her fraud finding and subsequent denial of the applicant's claim.

The AAO finds that the explanation provided by the IDD is a generalized statement that is unsubstantiated by any official policy or evidence in the record. The AAO finds further that the general statement does not support, without further individualized and specific evidence of fraud, the IDD's conclusion that the paternity documentation submitted by the applicant is unreliable and can be given no weight.

The AAO notes that the record of proceedings in the present case reflects that the IDD conducted a CIS investigation into the authenticity of several of the documents submitted by the applicant. The record of proceedings reflects further that CIS findings were made pursuant to the IDD initiated investigation. The IDD decision fails, however, to discuss or analyze the results of the fraud investigation, and the IDD decision does not discuss whether, or how the investigation results support a finding that the documents submitted by the applicant are fraudulent. The AAO finds that rather than making an unsubstantiated and general statement about Yemeni document fraud, the IDD must instead explain if and how the individual investigation results in this case led her to conclude that the documentation submitted by the applicant was fraudulent. Moreover, the AAO notes that if DNA evidence was submitted by the applicant to support his paternity claim, the IDD must also address the probative value of this evidence in her decision.

Because the IDD's decision failed to explain the specific reasons for her denial of the applicant's case, the AAO finds it necessary to remand the present matter to the IDD for review of CIS records relating to the applicant and for a new decision explaining any individualized fraud investigation findings in the applicant's case. If a new decision is adverse to the applicant, the decision shall be certified to the AAO for review.

ORDER: The matter is remanded to the interim district director for further action consistent with this decision.