U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: HARTFORD, CT Date: MAR 15 2004

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship.

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 application was denied by the Interim District Director, Boston, Massachusetts, and is now before the Administrative Appeals Office (AAO) on appeal. The case will be dismissed.

The applicant was born on April 24, 1981, in Lahore, Pakistan. The applicant's mother, (Ms. was born in Pakistan on April 13, 1962, and she became a naturalized United States (U.S.) citizen on May 8, 1996. The record reflects that the applicant's father was born in Pakistan and has no claim to U.S. citizenship. The applicant was admitted into the U.S. as a lawful permanent resident on June 2, 1998. The applicant seeks a certificate of citizenship pursuant to section 321 of the former Immigration and Nationality Act (former Act), 8 U.S.C. § 1432.

The interim district director found that an Immigration and Naturalization Service (Service, now, Citizenship and Immigration Services, CIS) Investigation Report had concluded that the divorce and legal custody evidence submitted by the applicant was fraudulent. The interim district director therefore concluded that the applicant had failed to establish that his parents were legally divorced or that his mother had been awarded legal custody of the applicant, as required by section 321 of the former Act. The interim district director found further that the applicant had failed to meet the requirements for citizenship under section 320 of the Immigration and Nationality Act (the amended Act), because he was over the age of eighteen when the provision took effect on February 27, 2001. The application was denied accordingly

On appeal, counsel asserts that the Service Investigative Report findings were erroneous and that the documents submitted by the applicant were authentic. Counsel asserts further that the Service previously found Ms divorce and custody documentation to be valid when they granted the applicant lawful permanent resident status in the United States. Counsel provided no new legal or documentary evidence to substantiate his assertions on appeal.

The Child Citizenship Act of 2000 (CCA) which took effect on February 27, 2001, repealed section 321, and amended sections 320 and 322, of the former Act as of February 27, 2001.

Section 320 of the amended Act 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 apply only to persons who had not turned 18-years-old as of February 27, 2001. Because the applicant was over the age of 18 on February 27, 2001, he is not eligible for the benefits of section 320 of the amended Act.

Section 321 of the former Act was repealed on February 27, 2001, by the CCA. However, persons who acquired citizenship automatically under former section 321 of the Act, as previously in force prior to February 27, 2001, may apply for a certificate of citizenship at any time. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). The AAO finds that the applicant also does not qualify for citizenship pursuant to section 321 of the former 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 has failed to establish that both of his parents became naturalized U.S. citizens prior to his 18th birthday. He also failed to establish that his parents were legally divorced or that his mother obtained legal custody over the applicant pursuant to a legal separation or divorce. The record contains clear evidence that the legal divorce and custody documentation submitted by the applicant was found to be fraudulent pursuant to a Service fraud investigation. No documentation or evidence was submitted on appeal to overcome the findings of the Service investigation. Furthermore, counsel's assertion that the Service previously found the divorce and child custody documentation to be valid when they approved the applicant's family based immigrant visa petition, is speculative and unsupported by the evidence in the record, and the AAO notes that establishing legal custody of a child pursuant to a legal divorce or separation is not required to obtain lawful permanent resident status pursuant to an immigrant visa petition by a U.S. citizen parent. *See* Section 203 of the Act, 8 U.S.C. § 1153. *See also,* 8 C.F.R. § 204.2(d) (reflecting that it is the establishment of the parent's citizenship status and bona fide parent child relationship is determinative in the approval of a child's immigrant visa petition.)

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.