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U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

MAY 13 2004

FILE: [redacted] Office: SEATTLE, WA Date:

IN RE: Applicant [redacted]

APPLICATION: Application for Certificate of Citizenship under Section 320 of the 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 Acting District Director, Seattle, Washington, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record indicates that the applicant was born in Korea on May 18, 1984. The applicant's father was born in Korea on March 9, 1964, and he became a naturalized United States (U.S.) citizen on April 16, 1986. The applicant's mother was born in Korea on December 14, 1960, and is not a U.S. citizen. The record reflects that the applicant's parents married in Korea on October 9, 1983. The applicant was admitted into the United States as a lawful permanent resident on April 12, 1985. He seeks a certificate of citizenship under section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The acting district director concluded that the applicant was ineligible for citizenship under section 320 of the Act because he did not reside in the United States in the physical custody of his father.

On appeal, the applicant asserts that his father (Mr. lives and works in the U.S. and that he resided with his father at the time he filed his citizenship application.[1] In support of his assertion, the applicant submits an employment verification letter from Equity Residential, Fort Lewis, dated June 25, 2003, stating that Mr. has been employed with their maintenance department since April 5, 2002, and that records show Mr. address as 1311 104th Street S., Tacoma, Washington, 98444. The applicant additionally asserts on appeal that, for naturalization purposes, he wants his name to be changed from

The AAO notes that it has no jurisdiction to address the applicant's request for a name change. *See* 8 C.F.R. § 103.1(f). The AAO will therefore not address the applicant's name change request.

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 birthdays as of February 27, 2001. The applicant was sixteen years old on February 27, 2001. He therefore meets the age requirement for benefits under the CCA.

Section 320(a) of the Act, as amended, states that:

> (a) A child born outside of the United States automatically becomes a citizen of the United States when all of the following conditions have been fulfilled:
>
> (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 record in the present case reflects that the applicant's father became a naturalized U.S. citizen in 1986, and that the applicant was admitted into the United States in 1985. Both events occurred when the applicant was one years old. The AAO additionally notes that the legal and physical custody requirements set forth in section 320 of the Act are assessed as of February 27, 2001, the date that the amendments made by the CCA legally came into effect. *See Matter of Jesus Enrique Rodriguez-Tejedor*, 23 I&N Dec. 153, 157 (BIA 2001). The record in the present case reflects that the applicant's parents married and that his parents therefore shared legal custody over the applicant. Nevertheless, the AAO finds that the evidence in the record fails to establish that the applicant

[1] The AAO notes that the applicant's N-600, Application for Certificate of Citizenship was filed on February 19, 2002.

was in the physical custody of his father as of February 27, 2001, as required by section 320 of the Act.

As noted in the acting district director's decision, the Form N-600, Application for Certificate of Citizenship (N-600 application) filed by the applicant in February of 2002, states that the applicant resided at 1311 104th Street, South, in Tacoma, Washington, and that the applicant's father resided at 357 Sinchag-Ri, Song-tan City in Korea. The AAO notes that on August 27, 2002, the acting district director requested evidence that reflected the applicant's residence with his father in the U.S., such as school or medical records. The applicant submitted no such documentation. The AAO notes further that the Employment Verification letter submitted by the applicant on appeal, does not clarify why the applicant listed a Korean address for his father on his N-600 application. Moreover, even assuming the employment verification letter did establish that the applicant's father lived at 104th Street, South in Tacoma from April 2002 to the present, the record nevertheless contains no evidence to establish that the applicant lived with his father at any time prior to the applicant's eighteenth birthday.

The AAO therefore finds that the evidence contained in the record fails to establish where the applicant has resided in the U.S. or that the applicant resided in the U.S. with his father between February 27, 2001 and May 18, 2002, when the applicant turned eighteen years old.

The AAO notes further that the applicant does not qualify for citizenship under the former Immigration and Nationality Act (former Act) provisions, as they existed prior to February 27, 2001.

Section 320 of the former Act, 8 U.S.C. § 1431 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 his birth. The applicant therefore does not qualify for consideration under former section 320 of the Act.

Section 322 of the former Act, 8 U.S.C. § 1433, stated in pertinent part that:

> (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 applicant failed to establish that his father filed a citizenship application on his behalf or that the Service (CIS) approved any such an application prior to the applicant's eighteenth birthday.

The applicant also does not qualify for a certificate of citizenship under section 321 of the former Act, 8 U.S.C. § 1432, which stated, 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 failed to establish that his mother is a naturalized U.S. citizen or that he otherwise meets the requirements set forth in section 321 of the former Act.

8 C.F.R. 341.2(c) states that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. *See also* § 341 of the Act, 8 U.S.C. § 1452. The applicant has not met his burden, and the appeal will be dismissed.

ORDER: The appeal is dismissed.