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U.S. Citizenship and Immigration Services

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MAY 13 2004

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

IN RE: Applican[redacted]

APPLICATION: Application for Certificate of Citizenship pursuant to 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 District Director, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on October 5, 1981, in Ternate Cavite, the Philippines. The applicant's father was born in the Philippines on January 1, 1955, and he became a naturalized United States (U.S.) citizen on February 17, 1989. The applicant mother is not a U.S. citizen. The record reflects that the applicant's father filed a Form I-130, Petition for Alien Relative (Form 1-130) on the applicant's behalf on May 23, 1986. The Form I-130, was denied by the district director on July 28, 1986, because the applicant did not meet the definition of "child" as set forth in section 101(b)(1) of the Act. The applicant entered the United States in an unknown status on or about May 15, 1991. He 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 ineligible for automatic U.S. citizenship pursuant to section 322 of the former Act because he did not meet the definition of "child" as set forth in section 101(c) of the Act, and because the applicant had failed to establish he was physically present in the United States pursuant to a lawful admission.

On appeal, the applicant, through his father, states that the Immigration and Naturalization Service (Service, now Citizenship and Immigration Services, CIS) denied his certificate of citizenship application and that he has attached a separate brief and evidence requesting approval of his certificate of citizenship application. The applicant makes no other assertions on appeal, and the AAO notes that the record does not contain a separate brief or additional evidence.

Prior to amendments made by the Child Citizenship Act of 2000 (CCA), which took effect on February 27, 2001, 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.

Section 101(c) of the Act states that:

> (c) As used in title III-
>
> > (1) The term "child" means an unmarried person under twenty-one years of age and includes a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in the United States or elsewhere. . . if such legitimation . . . takes place before the child reaches the age of 16 years . . . and the child is in the legal custody of the legitimating . . . parent or parents at the time of such legitimation.

The AAO notes that Mr. [redacted] resided or was domiciled in the state of New York at the time of his 1986, Form I-130 petition for the applicant and when the applicant's N-600, Application for Certificate of Citizenship, was filed. In order to legitimate a child under either New York State or Philippine law, the parents of the child must marry one another. *See* New York Domestic Relations Law, section 24, and *Matter of Espinoza,* 17 I&N Dec. 522 (BIA 1980) (discussing legitimation requirements under New York law.) *See also, Matter of Blancaflor,* 14 I&N Dec. 427, 428 (BIA 1973) (discussing legitimation requirements set forth in the Civil Code of the Republic of Philippines).

In the present case, the evidence clearly demonstrates that the applicant's parents never married. The applicant was thus not legitimated under New York or Philippine law, and he does not meet the definition of "child" as set forth in section 101(c) of the Act. Accordingly, the AAO finds that the applicant does not qualify as a "child for former section 322 purposes. The AAO additionally notes that the applicant does not qualify as a "child" pursuant to any other automatic citizenship provisions set forth in the former or the amended Act.[1] Because the applicant is statutorily ineligible to apply for citizenship under section 322 of the

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[1] Section 320 of the former 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.

Section 321 of the former Act provided, in 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

former Act, or under any automatic citizenship provision contained in the former or present Act, the AAO finds it unnecessary to further analyze the applicant's eligibility for citizenship under these provisions.

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. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.

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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.

Section 320 of the Act as amended by the Child Citizenship Act of 2000 (CCA), took effect on February 27, 2001, and provides that a child born outside of the U.S. automatically becomes 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.