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U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

MAY 13 2004

FILE: [redacted] Office: PORTLAND, OREGON Date:

IN RE: Applica[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 Interim District Director, Portland, Oregon, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born in Guangdong, China on November 27, 1999. The applicant's father was born in China on June 3, 1963, and he became a naturalized U.S. citizen on July 26, 2002. The applicant's mother was born in China on February 1, 1971. She is not a U.S. citizen. The record reflects that the applicant's parents married in China on March 12, 1997. The applicant seeks a certificate of citizenship under section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The interim district director concluded that the applicant failed to establish he resided in the United States pursuant to a lawful admission for permanent residence, as required by section 320 of the Act. The application was denied accordingly.

On appeal, the applicant, through his father, asserts that he resides in the United States in the legal and physical custody of his U.S. citizen father. The applicant makes no assertions on appeal regarding whether or not he was admitted into the U.S. as a lawful permanent resident.

Section 320(a) of the Act 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**.

(Emphasis added). In the present matter, the applicant has established that he is under the age of eighteen and that his father became a naturalized U.S. citizen prior to his eighteenth birthday. The applicant has additionally established that he lives in the U.S. with his U.S. citizen father. The record reflects, however, that the applicant was not admitted into the U.S. pursuant to a lawful admission for permanent residence. Rather, the record reflects that the applicant was admitted into the U.S. pursuant to a temporary non-immigrant, V2 visa.

The AAO notes that Citizenship and Immigration Service centralized computer databases contain no information to establish that the applicant has ever applied for, or adjusted his temporary immigration status to that of a lawful permanent resident, and no evidence was submitted on appeal to establish that the applicant entered the U.S. pursuant to a lawful admission for permanent residence. The applicant has therefore failed to establish that he meets all of the requirements for automatic citizenship under section 320 of the 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. The applicant has not met his burden in this case and the appeal will be dismissed.

ORDER: The appeal is dismissed.[1]

[1] The AAO notes that the present appeal is dismissed without prejudice, and that the applicant may reapply for a certificate of citizenship under section 320 of the Act if he obtains lawful permanent residence status in the U.S. prior to his eighteenth birthday, while residing in the legal and physical custody of his U.S. citizen parent.