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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: BALTIMORE, MD Date: MAY 24 2004

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship pursuant to Sections 320 and 322 of the Immigration and Nationality Act; 8 U.S.C. § 1431 and 1433.

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 case will be dismissed.

The applicant was born in Liberia on May 14, 1985. The record indicates that the applicant was adopted in the Montserrado County Court, in Liberia on August 12, 1999, when she was 14 years old, and that the applicant's adoptive mother became a naturalized United States (U.S.) citizen on October 4, 1997. The applicant was admitted into the United States pursuant to a B2 temporary visitor visa on June 22, 1999, when she was 14 years old. The applicant's visitor visa expired on December 21, 1999, and the record contains no information to indicate that the visa was extended. The record reflects that the applicant applied for Deferred Enforced Departure (DED) and (Liberian) Temporary Protected Status (TPS), and that the Immigration and Naturalization Service (Service, now Citizenship and Immigration Services, CIS) granted her Employment Authorization pursuant to these applications beginning in 2001. The record indicates that the applicant has presently been granted TPS status through October 1, 2004. The record contains no information to indicate that the applicant has ever been granted lawful permanent resident status in the United States. The applicant is seeking a certificate of citizenship under sections 320 and 322 of of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1431 and 1433.

The district director concluded that the applicant had failed to establish that she resided outside of the U.S. in the physical custody of her U.S. citizen parent as required by section 322 of the Act. The district director concluded further that the applicant had failed to establish that she was temporarily in the U.S. pursuant to a lawful admission or that she was maintaining such lawful status. The application was denied accordingly. The district director did not address the applicant's eligibility for a certificate of citizenship under section 320 of the Act.

On appeal, the applicant, through her mother, asserts that she was admitted into the U.S. pursuant to a lawful temporary admission and that she has maintained a lawful temporary status since the time of her June 1999, entry into the United States. The applicant additionally asserts that she has resided in the legal and physical custody of her mother since her entry into the United States. In support of this assertion, the applicant submits school records indicating that she lived in Maryland with her mother and attended school in Maryland between the years 2000 and 2002. The applicant concludes that she has met the requirements set forth in section 322 of the Act and that she qualifies for a certificate of citizenship.

Sections 320 and 322 of the Act were 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 fifteen years old on February 27, 2001. She is therefore eligible for the benefits of the CCA.

Section 322 of the Act applies to children born and residing outside of the United States. The section provides in pertinent part that:

> (a) A parent who is a citizen of the United States may apply for naturalization on behalf of a child born outside of the United States who has not acquired citizenship automatically under section 320. The Attorney General [now, Secretary, Homeland Security, "Secretary"] shall issue a certificate of citizenship to such applicant 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 United States citizen parent--

(A) has been physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years; or

(B) has a citizen parent who has been physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years.

(3) The child is under the age of eighteen years.

(4) The child is residing outside of the United States in the legal and physical custody of the citizen parent, is temporarily present in the United States pursuant to a lawful admission, and is maintaining such lawful status.

(b) Upon approval of the application (which may be filed from abroad) and . . . upon taking and subscribing before an officer of the Service within the United States to the oath of allegiance required by this Act 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.

(c) Subsections (a) and (b) shall apply to a child adopted by a United States citizen parent if the child satisfies the requirements applicable to adopted children under section 101(b)(1).

The HQISD 70/33 Service Memorandum by William R. Yates, Deputy Executive Associate Commissioner, INS, entitled "Implementation Instructions for Title I of the Child Citizenship Act of 2000" (February 26, 2001), states, in pertinent part, that;

Under section 322 of the Act a foreign-born child who resides outside the United States must be lawfully admitted to the United States and maintain such lawful status until the application for certificate of citizenship is approved and the oath of allegiance administered . . . . A child may be admitted in any nonimmigrant classification. A child is considered to have maintained lawful status if his or her nonimmigrant classification has not been revoked or has not expired by operation of law.

The evidence in the record indicates that the applicant was admitted into the U.S. on June 22, 1999, with a B2 visitor visa, and that the duration of her nonimmigrant classification pursuant to this visa expired on December 21, 1999. Pursuant to the February 26, 2001, Service Memo above, the applicant no longer maintained her original lawful admission status subsequent to December 21, 1999. The applicant therefore failed to satisfy the conditions set forth in section 322(a)(4) of the Act.

Moreover, the applicant also failed to establish that she resided outside of the U.S. in the legal and physical custody of her U.S. citizen parent as required by section 322(a)(4) of the Act. To the contrary, the evidence in

the record indicates that subsequent to her entry into the U.S. in June of 1999, the applicant has continuously resided in this country. The applicant has therefore failed to establish that she meets the requirements for a certificate of citizenship under § 322 of the Act.

The applicant has also failed to establish that she qualifies for a certificate of citizenship under § 320 of the Act. Section 320 of the Act, effective on February 27, 2001, and applicable in cases where a child resides in the U.S., states in pertinent part 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.
>
> (b) Subsection (a) shall apply to a child adopted by a United States citizen parent if the child satisfies the requirements applicable to adopted children under section 101(b)(1).

In the present case, there is no evidence in the record to indicate that the applicant entered the U.S. pursuant to a lawful admission for permanent residence or that she has adjusted her status to that of a permanent residence since her entry into the United States. The applicant thus does not meet the requirements set forth in section 320(a)(3) of the Act.

Beyond the decision of the director, the AAO notes further that the applicant also does not appear to qualify as a "child" under the Act. Section 101(c) defines "child" in pertinent part, as follows:

> (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, and, except as otherwise provided in sections 320, and 321 of title III, a child adopted in the United States, if such legitimation or adoption takes place before the child reaches the age of 16 years (except to the extent that the child is described in subparagraph (E)(ii) or (F)(ii) of subsection (b)(1)), and the child is in the legal custody of the legitimating or adopting parent or parents at the time of such legitimation or adoption.

Section 101(b)(1) of the Act states, in pertinent part, that:

> (b)(1) The term "child" means an unmarried person under twenty-one years of age who is –
>
> . . . .

> (E)(i) a child adopted while under the age of sixteen years if the child has been in the legal custody of, and has resided with, the adopting parent or parents for at least two years.

The record in the present case reflects that the applicant was adopted on August 12, 1999, when she was fourteen years old, and that she resided in the legal and physical custody of her adoptive mother as of August 12, 1999. The record reflects further that the applicant turned sixteen years old on May 14, 2001, less than two years after the date of her adoption. It thus appears that the applicant fails to meet the requirements set forth in section 101(b)(1)(E)(i) of the Act, and accordingly does not qualify as a "child" under the Act.

Because the applicant is statutorily ineligible for a certificate of citizenship pursuant to sections 320 and 322 of the Act, the appeal will be dismissed.

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.

ORDER: The appeal is dismissed.