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

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: SAN FRANCISCO (SACRAMENETO), CA Date: APR 27 2005

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship under Section 321 of the former Immigration and Nationality Act; 8 U.S.C. § 1432.

ON BEHALF OF APPLICANT:

[redacted]

PUBLIC COPY

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, San Francisco (Sacramento), California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on March 4, 1941, in Canada. The applicant's mothe was born in Canada, and she became a naturalized U.S. citizen on November 11, 1954, when the applicant was thirteen years old. The applicant's natural father is not a U.S. citizen. The applicant's mother obtained an interlocutory divorce from the applicant's natural father, Allen Scott Hill, on July 21, 1950, and she obtained a final divorce on November 13, 1951, when the applicant was ten years old. The applicant's mother was awarded legal and physical custody over the applicant at the time of her divorce. The applicant's mother marrie (Mr a U.S. citizen, on August 7, 1953. Mr. subsequently adopted the applicant on November 1, 1954, when the applicant was thirteen years old. The applicant presently seeks a certificate of citizenship pursuant to section 321 of the former Immigration and Nationality Act (the former Act), 8 U.S.C. § 1432, based on the claim that she acquired U.S. citizenship through her mother.

The district director found the applicant had failed to establish that she resided in the United States pursuant to a lawful admission for permanent residence, as required by section 321 of the former Act. The application was denied accordingly.

Counsel asserts on appeal that the applicant is entitled to U.S. citizenship because her mother had custody of the Applicant at the time of their entry into the United States in 1948, and because her mother intended to become a U.S. permanent resident at the time of her entry into the United States. Counsel asserts that the applicant's legal status was dependent on her mother's intent to become a U.S. permanent resident. Counsel asserts further that in the event that the applicant's mother's entry was not lawful, the applicant's entry was later legitimized by her mother's naturalization as a U.S. citizen.

Section 321 of the former Act states in pertinent part that:

(a) A child born outside of the United States of alien parents . . . 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 such child is under the age of eighteen 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 (1) of this subsection, or the parent naturalized under clause (2) or (3) of

> this subsection, or thereafter begins to reside permanently in the United States while under the age of eighteen years.

The AAO notes that the requirements for citizenship set forth in the Immigration and Nationality Act are statutorily mandated. The applicant is therefore required to meet the statutory provisions contained in section 321 of the former Act, in order to obtain U.S. citizenship.

Section 101(a)(20) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(20) defines the term, "lawfully admitted for permanent residence" as, "[t]he status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed."

Counsel submitted no evidence on appeal to establish that the applicant has at any point been "lawfully admitted for permanent residence", as set forth in the Act. Moreover, a thorough review of the record reflects that it contains no evidence to indicate or establish that the applicant has at any time applied for or been granted lawful permanent residence in the United States. Accordingly, the AAO finds that the applicant is ineligible for citizenship under 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 his claimed citizenship by a preponderance of the evidence. The applicant has failed to meet her burden of proof. The appeal will therefore be dismissed.[1]

ORDER: The appeal is dismissed.

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[1] The present record contains a partial copy of an expired U.S. passport issued to the applicant in June 2001. Neither the district director's decision, nor the applicant's appeal discusses the passport or its evidentiary value. The AAO notes that the Board of Immigration Appeals (Board) held in *Matter of Villanueva,* 19 I&N Dec. 101 (BIA 1984), that a U.S. passport is conclusive proof of U.S. citizenship, and that "unless void on its face, a valid United States passport issued to an individual as a citizen of the United States is not subject to collateral attack in administrative immigration proceedings." The present record contains no evidence to indicate that the applicant presently has a valid U.S. passport. The AAO notes, however, that the present AAO decision is without prejudice to the applicant's filing a new application for a certificate of citizenship if she becomes eligible for U.S. citizenship.