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U.S. Citizenship
and Immigration
Services

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JUN 14 2005

FILE:



Office: SAN FRANCISCO, CALIFORNIA

Date:

IN RE:

Applicant:



APPLICATION:

Application for Certificate of Citizenship under § 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, San Francisco, California, 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 1, 1989 in Yemen. The applicant's mother is not a U.S. citizen; she is a lawful permanent resident of the United States. The applicant's natural father and her mother's first husband was not a U.S. citizen. After the applicant's natural father passed away, the applicant's mother married the applicant's step-father in 1994. The applicant's step-father became a naturalized U.S. citizen in 1998. The applicant was admitted to the United States in 2000 as a permanent resident, based on her step-father's petition for alien relative. The applicant seeks a certificate of U.S. citizenship under § 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431 based on her step-father's U.S. citizenship.

The district director concluded that the applicant did not meet the definition of "child" set forth in section 101(c)(1), because her step-father did not legally adopt her. The district director pointed out that Title 8 C.F.R. § 322(a)(b)(2) specifically states that a "step-child" does not fall within the definition of a child for the purposes of this determination. The AAO notes that the district director erroneously considered the instant application under § 322(a) of the Act prior to its 2000 amendment by the Child Citizenship Act (CCA). The CCA took effect on February 27, 2001. Since the applicant was under the age of eighteen on the effective date of the CCA, its provisions apply to her application for a certificate of citizenship. The AAO finds that the director's error was harmless, however, as the lack of evidence of a legal adoption of the applicant by her step-father continues to preclude her derivation of citizenship through her step-father.

On appeal, the applicant expresses his fatherly intentions toward the applicant and her sibling, his step-children. Nevertheless, he fails to submit any evidence to overcome the district director's assessment regarding the adoption issue in this case.

Section 320 of the Act (as amended by the CCA) states in pertinent part:

(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).

Section 101(b)(1)(E) of the Act states, in pertinent part, that the term "child" means an unmarried person under twenty-one years of age who is-

[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: Provided, That no natural parent of any such adopted child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act

....

The record in the present case contains a Yemeni court document dated August 11, 2003 that establishes that the applicant's stepfather has supported the applicant since his marriage to her mother in 1994. This document does not constitute evidence of adoption, however; hence, the applicant cannot be considered her step-father's "child" for derivative citizenship purposes of § 320 of the Act (as amended).

The evidence does not establish that the applicant qualifies as a "child" under § 101(b)(1)(E) of the Act. Therefore, she is statutorily ineligible for consideration under § 320 of the Act. This decision is without prejudice to any other application for naturalization the applicant might choose to make.

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 and the appeal will be dismissed.

ORDER: The appeal is dismissed.