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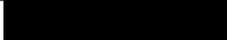
U.S. Citizenship
and Immigration
Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: APR 05 2007

WAC 06 047 51858

IN RE:

Applicant:



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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant was born on October 26, 2003 in Seoul, South Korea. He was legally adopted by [REDACTED] on February 18, 2005 in the Superior Court of New Jersey, Chancery Division: Family Part, Somerset County (Docket No. [REDACTED]). The applicant's parents were born in the United States and he acquired lawful permanent resident status as of June 17, 2004. The applicant seeks a certificate of citizenship under section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The Form N-600, Application for Certificate of Citizenship, was filed on April 18, 2005. On March 2, 2006, the director denied the application after finding that the evidence of record failed to establish that the applicant had been in the legal and physical custody of his adoptive parents for two years as specified in section 101(b)(1)(E) of the Act, 8 U.S.C. § 1101(b)(1)(E).

On appeal, the applicant's father states, in part:

[The] decision [is] in error, because [the] applicant . . . entered the U.S. under § 101(b)(1)(F) of the INA, not (E) as stated in the notice of decision.

Pursuant to the requirements of section 320 of the Act:

(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).

The record reflects that both of the applicant's parents were born in the United States, that he entered the United States as a lawful permanent resident in 2004 when he was less than one year old and was legally adopted by his parents on February 18, 2005. Accordingly, the only remaining issue is whether the applicant satisfies the requirements of section 101(b)(1) as they apply to adopted children.

The record establishes the applicant as an orphan. The definition of child as it applies to orphans is found in section 101(b)(1)(F) of the Act, 8 U.S.C. § 1101(b)(1)(F). Pursuant to section 101(b)(1)(F), the term "child" means an unmarried person under twenty-one years of age who is-

- (i) [A] child, under the age of sixteen at the time a petition is filed in his behalf to accord a classification as an immediate relative under section 1151(b) of this title, who is an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss

from, both parents, or for whom the sole or surviving parent is incapable of providing the proper care and has in writing irrevocably released the child for emigration and adoption . . . who is coming to the United States for adoption by a United States citizen and spouse jointly . . . who have complied with the preadoption requirements, if any, of the child's proposed residence

The record contains documentation that establishes that the applicant was an abandoned child, that legal guardianship of the applicant was awarded to [REDACTED], President, Eastern Social Welfare Society, Inc. of South Korea on November 20, 2003 and that she released the applicant for adoption on December 10, 2003. The applicant's immigrant visa, issued on June 4, 2004, identifies him as an IR4 beneficiary, i.e., an orphan coming to the United States for adoption by a U.S. Citizen. The judgment of adoption issued by the Superior Court of New Jersey offers proof that the applicant's parents complied with New Jersey adoption requirements, indicating that the adoption was handled and supervised by approved adoption agencies. Accordingly, the applicant is a child as defined under section 101(b)(1)(F) of the Act.

The record establishes that all the conditions for the automatic acquisition of U.S. citizenship by the applicant were met as of February 18, 2005, the date on which he became the lawful child of his U.S. citizen parents. The appeal will be sustained.

The regulation at 8 C.F.R. § 341.2(c) places the burden of proof on the applicant to establish the claimed citizenship by a preponderance of the evidence. The applicant has met his burden. The appeal will be sustained.

ORDER: The appeal will be sustained.