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

U.S. Citizenship and Immigration Services

Ex

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: MAR 06 2007
WAC 06 031 50962

IN RE: Applicant: [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, 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 dismissed.

The record reflects that the applicant was born in Egypt on June 12, 1984. The applicant's mother, [redacted] is a citizen of Egypt. The applicant's father, [redacted] born in Egypt, became a naturalized U.S. citizen on September 29 1995, when the applicant was 11 years of age. The record reflects that the applicant's parents were married in Egypt on October 10, 1982. The applicant was admitted into the United States as a lawful permanent resident on June 18, 1999, at the age of 15 years. He seeks a certificate of citizenship under section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The director concluded that the applicant had failed to establish he resided in the United States in the physical custody of his U.S. citizen parent, as required by section 320 of the Act, and denied the application. The director based this finding on testimony provided by the applicant's father during a July 18, 2002 interview related to the applicant's filing of a previous Form N-600, Application for Certificate of Citizenship. During that interview, the applicant's father indicated that his son did not live with him but with his mother in Egypt. *Decision of the Director*, dated July 7, 2006.

On appeal, the applicant indicates that at the time of his previous application, he was traveling back and forth to Egypt in order to complete his education there. However, since the fall of 2005, when he was admitted to college, the applicant contends that he has not left the United States. He asserts that the director's July 7, 2006 decision was made on out-dated information. In support of his statements, the applicant submits documentation to establish his presence in the United States: his June 15, 2006 Commerce Bank statement; an August 2, 2006 doctor's statement indicating that the applicant had a physical examination on June 10, 2006; a Certificate of Attendance awarded to the applicant by LaGuardia Community College for attending a Winter 2006 evening program at The English Language Center and a written evaluation of the applicant's listening/speaking and reading/writing skills from LaGuardia instructors.

Section 320 of the Act was amended by the Child Citizenship Act of 2000 (CCA), and took effect on February 27, 2001. The CCA benefits all persons who had not reached their eighteenth birthdays as of February 27, 2001. Because the applicant was 16 years old on February 27, 2001, he meets the age requirement for benefits under the CCA.

Section 320 of the Act 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.

The record reflects that the applicant was admitted into the United States as a lawful permanent resident in 1999, and that the applicant's father became a naturalized U.S. citizen in 1995. Both events occurred prior to the applicant's eighteenth birthday. The applicant therefore meets the requirements set forth in subsections (a)(1) and (a)(2) of section 320 of the Act. He has not, however, established eligibility under subsection

(a)(3).

Legal and physical custody requirements set forth in section 320 of the Act are assessed as of February 27, 2001, the date that the amendments made by the CCA legally came into effect. *See Matter of Jesus Enrique Rodriguez-Tejedor*, 23 I&N Dec. 153, 157 (BIA 2001). While the record offers some evidence that the applicant began physically residing with his father in the fall of 2005, that residence did not begin until the applicant was almost 21 years of age. As the record does not demonstrate that the applicant was residing in the physical custody of this father prior to his 18th birthday, he is not eligible for a certificate of citizenship under section 320 of the Act.

In that the applicant was born prior to the February 27, 2001 effective date of the CCA, the AAO has also considered whether he might be eligible for a certificate of citizenship under the relevant provisions of the Act as they existed at the time of his birth – former sections 320, 321 and 322 of the Act.

Former section 320 of the Act, 8 U.S.C. § 1431 provided that:

> (a) A child born outside of the United States, one of whose parents at the time of the child's birth was an alien and the other of whose parents then was and never thereafter ceased to be a citizen of the United States, shall, if such parent is naturalized, become a citizen of the United States, when
>
> (1) such naturalization takes place while such child is under the age of 18 years; and
>
> (2) such child is residing in the United States pursuant to a lawful admission for permanent residence at the time of naturalization or thereafter and begins to reside permanently in the United States while under the age of 18 years.

Neither of the applicant's parents were U.S. citizens at the time of his birth. Therefore, the applicant therefore does not qualify for U.S. citizenship under former section 320 of the Act.

Former section 321 of the Act, 8 U.S.C. § 1432, repealed by the provisions of the CCA, provided that:

> (a) A child born outside of the United States of alien parents, or of an alien parent and a citizen parent who has subsequently lost citizenship of the United States, 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 said child is under the age of 18 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 (2) or (3) of this subsection, or thereafter begins to reside permanently in the United States while under the age of 18 years.

As only the applicant's father has naturalized and he is not his sole surviving parent or the parent with legal custody following a legal separation from the applicant's mother, the conditions of subsections (a)(1) and (a)(2) are not met by the circumstances of the instant case. Therefore, the applicant may also not be granted a certificate of citizenship under the repealed section 321 of the Act.

The applicant also fails to qualify for U.S. citizenship under former section 322 of the Act, which provided that:

> (a) A parent who is a citizen of the United States may apply to the Attorney General [now the Secretary, Homeland Security, "Secretary"] for a certificate of citizenship on behalf of a child born outside the United States. The Attorney General [Secretary] shall issue such a certificate of citizenship 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 child is physically present in the United States pursuant to a lawful admission.
>
> (3) The child is under the age of 18 years and in the legal custody of the citizen parent.
>
> (b) Upon approval of the application . . . [and] upon taking and subscribing before an officer of the Service within the United States to the oath of allegiance required by this chapter 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.

The AAO notes that, whether or not an applicant satisfies the requirements set forth in former section 322(a) of the Act, section 322(b) required that an applicant also establish that his or her application for citizenship was approved by Citizenship and Immigration Service (CIS) prior to the applicant's eighteenth birthday, and that the applicant had taken an oath of allegiance prior to turning eighteen. The applicant in the instant case has not met the requirements set forth in former section 322(b) of the Act. CIS did not approve his certificate of citizenship application before he turned eighteen years of age, and he did not take an oath of allegiance prior to his eighteenth birthday.

For the reasons previously discussed, the applicant has not established that he is eligible for a certificate of citizenship. Accordingly, the appeal will be dismissed.

The regulation at 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.

ORDER: The appeal is dismissed.