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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:

Office: CHARLOTTE, NC

Date:

OCT 28 2008

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Charlotte, North Carolina, 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 Vietnam on December 21, 1998. The applicant's father became a U.S. citizen upon his naturalization in 2006. The applicant's mother is not a U.S. citizen. The applicant was admitted to the United States as a refugee in July 2000. The applicant presently seeks a certificate of citizenship under section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431, based on the claim that he derived citizenship from his father.

The field office director concluded that the applicant did not acquire U.S. citizen pursuant to section 320 of the Act, 8 U.S.C. § 1431, because he has not been admitted for lawful permanent residency. The application was denied accordingly.

On appeal, the applicant's father submits evidence of the applicant's admission as a refugee, the applicant's mother's lawful permanent resident card and passport, and his naturalization certificate.

The Child Citizenship Act of 2000 (CCA) took effect on February 27, 2001. The CCA, which amended sections 320 and 322 of the Act, benefits all persons who have not yet reached their eighteenth birthdays as of February 27, 2001. Because the applicant is under the age of 18, 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.
- (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 applicant was admitted to the United States as a refugee. The record indicates that he applied for adjustment of status to lawful permanent resident, but that his application was deemed abandoned. There is no evidence in the record suggesting that he is residing in the United States "pursuant to a lawful admission for permanent residence" as required by section 320(a)(3) of the Act, 8 U.S.C. § 1431(a)(3). Accordingly, the applicant has not acquired U.S. citizenship pursuant to section 320 of the Act.

The AAO notes "[t]here must be strict compliance with all the congressionally imposed prerequisites to the acquisition of citizenship." *Fedorenko v United States*, 449 U.S. 490, 506 (1981). 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 order to meet this burden, the applicant must submit relevant, probative and credible evidence to establish that the claim is “probably true” or “more likely than not.” *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). The applicant in this case has not met his burden. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.