identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529

U.S. Citizenship
and Immigration
Services

E2

[redacted]

FILE: [redacted] OFFICE: CALIFORNIA SERVICE CENTER Date: SEP 18 2008

IN RE: APPLICANT [redacted]

APPLICATION: Application for Certificate of Citizenship under Section 320 of the Immigration and Nationality Act, 8 U.S.C. § 1431 and Section 321 of the former Immigration and Nationality Act; 8 U.S.C. § 1432.

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 Form N-600, Application for Certificate of Citizenship (Form N-600) was denied by the Director, California Service Center. The matter was appealed to the Administrative Appeals Office (AAO). The appeal was rejected by the AAO as untimely on May 2, 2007. The AAO now moves to reopen the matter *sua sponte* based on the submission of evidence that the appeal was timely filed. The May 2, 2007, AAO decision will be withdrawn. The appeal will be dismissed, and the Form N-600 will be denied.

The record reflects that the applicant was born in Sudan on August 30, 1979. The applicant turned eighteen on August 30, 1997. The applicant's natural father was born in Ethiopia, and he became a naturalized U.S. citizen on December 30, 1992, when the applicant was thirteen years old. The applicant's natural mother is not a U.S. citizen. The record indicates that the applicant's natural parents did not marry. The applicant was admitted into the United States as a refugee on January 15, 1987, when he was seven years old. The applicant presently seeks a Certificate of Citizenship pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431, and section 321 of the former Immigration and Nationality Act (the former Act), 8 U.S.C. § 1432.

The director determined that the applicant did not meet the requirements for U.S. citizenship under section 321 of the former Act, because he failed to establish that both of his natural parents became U.S. citizens prior to his eighteenth birthday. The director determined that the applicant did not qualify for U.S. citizenship under section 320 of the Act, because he turned eighteen prior to the enactment of the provision. The Form N-600 was denied accordingly.

On appeal, the applicant asserts that his natural parents were not married, and that his father married a U.S. citizen after the applicant was admitted into the United States and prior to his eighteenth birthday. The applicant indicates that his stepmother was his custodial parent prior to his eighteenth birthday, and that she qualifies as a parent for section 320 and section 321 of the Act purposes. On this basis, the applicant asserts that he qualifies for U.S. citizenship under section 320 of the Act, and section 321 of the former Act.

It is noted that section 320 of the former Act was amended by the Child Citizenship Act of 2000 (CCA), and took effect on February 27, 2001.[1] Legal decisions have made clear that the provisions of the CCA are not retroactive and that the amended provisions of section 320 of the Act apply only to persons who were not yet eighteen years old as of February 27, 2001. *See Matter of Rodriguez-Tejedor,* 23 I&N Dec. 153 (BIA 2001).

---

[1] 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.

Because the applicant was over the age of eighteen on February 27, 2001, he is not eligible for the benefits of section 320 of the Act.

All persons who acquired citizenship automatically under section 321 of the former Act, as previously in force prior to February 27, 2001, may, however, apply for a Certificate of Citizenship at any time. *Matter of Rodriguez-Tejedor, supra.*

Section 321 of the former Act, states, in pertinent part, 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.

(Emphasis added.) Section 321 of the former Act clearly reflects that it applies only to a child *born of* the U.S. citizen parent. A stepparent thus does not qualify as a "parent" for section 321 of the former Act purposes.[2]

The record in the present matter contains no information to indicate that the applicant's natural parents married, or that his natural mother at any time became a U.S. citizen. The applicant therefore failed to establish the requirements contained in section 321(a)(1) of the former Act. The record also lacks evidence to indicate or establish that the applicant's natural mother is deceased. Moreover, because the applicant's natural parents did not marry, the applicant failed to establish that his father obtained legal custody over the applicant pursuant to a legal separation of his parents. The requirements contained in section 321(a)(2) and (3) of the former Act have thus also

---

[2] It is further noted that although a stepchild qualifies as a "child" under section 101(b)(1)(B) of the Act, 8 U.S.C. § 1101(b)(1)(B), for nonimmigrant and immigrant visa (Title I and Title II of the Act) purposes, a stepchild is not included in the definition of a "child" for section 101(c)(1) of the Act (Title III of the Act) citizenship purposes.

not been met. Accordingly, the applicant has failed to establish that he meets the requirements for citizenship as set forth in section 321of the former Act.

The regulation provides at 8 C.F.R. § 341.2(c), that the burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. The applicant has failed to meet his burden in the present matter. The appeal will therefore be dismissed and the Form N-600 will be denied.[3]

ORDER: The appeal is dismissed. The application is denied.

[3] The present decision is without prejudice to the applicant's filing a Form N-400, Application for Naturalization pursuant to section 316 of the Act, 8 U.S.C. § 1427, if eligible to do so.