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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

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FILE: [redacted] Office: SANTA ANA, CA Date:

NOV 18 2010

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship under Sections 320 and former section 321 of the Immigration and Nationality Act; 8 U.S.C. §§ 1431, 1432 (1961)

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion. The fee for a Form I-290B is currently $585, but will increase to $630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the $630 fee. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Santa Ana, California, and came before the Administrative Appeals Office (AAO) on appeal. The appeal was dismissed on June 18, 2010. The applicant filed a motion to reconsider. The applicant's motion will be granted and the prior decision of the AAO will be affirmed.

The applicant was born on [redacted] 1961 in Pakistan. The applicant claims to have been adopted by his aunt and uncle following his parents' death. He was admitted to the United States as a lawful permanent resident on July 29, 1980. His uncle became a U.S. citizen upon his naturalization in 1974. The applicant's eighteenth birthday was in 1979. The applicant seeks a certificate of citizenship pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431. Alternatively, the applicant seeks a certificate of citizenship pursuant to former section 321 of the Act, 8 U.S.C. § 1432 (repealed).

The field office director concluded that the applicant did not acquire U.S. citizenship because he was not adopted, and therefore not a "child" for citizenship purposes. The director noted that adoptions are not recognized under Pakistani law and that the applicant immigrated as an orphan released to the prospective adoptive parent for adoption in the United States (IR-4). The application was accordingly denied. On appeal, the applicant maintained that he was adopted and that he must be considered a "child" of his uncle because he immigrated to the United States as such. *See* Appeal Brief.

The AAO dismissed the applicant's appeal, in relevant part, because the record did not demonstrate that he was adopted and met the definition of a "child" at section 101(c) of the Act, 8 U.S.C. § 1101(c). The applicant, through counsel, now seeks reconsideration of our prior decision. Counsel claims that our prior decision recognized the applicant's adoption, that he derived U.S. citizenship pursuant to former section 321, and that the AAO erred in not addressing counsel's argument regarding the director's reliance on *Matter of Au Yeung*, 16 I&N Dec. 540 (BIA 1978).

The AAO reviews these proceedings *de novo*. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Therefore, the director's citation to *Matter of Au Yeung, supra*, is not at issue where, as here, the AAO did not rely on that decision. Moreover, the statement that the applicant was adopted in the introductory paragraph of the AAO's decision reflects the information provided by the applicant and does not constitute evidence, factual findings or conclusions of law. The applicant has not established that he was adopted by his aunt and uncle in Pakistan or in the United States and he therefore does not meet the definition of a "child" for citizenship purposes.[1] On motion, the

[1] The definition of "child" in section 101(c) of the Act is applicable to the citizenship and nationality provisions in Title III of the Act and provides as follows:

> ...an unmarried person under twenty-one years of age and includes a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile,

applicant has not provided any additional evidence in support of his claim that he was adopted. As noted in the AAO's prior decision, Pakistani law does not allow for adoptions. Contrary to counsel's assertion, U.S. Citizenship and Immigration Services (USCIS) records do not show that the applicant was adopted prior to his arrival in the United States. The petition to classify an orphan as an immediate relative filed by the applicant's uncle states that the applicant was "coming to the U.S. for adoption by petitioner and spouse." Question 17 of the petition specifically states that the applicant had not been adopted abroad. The record lacks any adoption decree or other evidence that the applicant's aunt and uncle actually adopted the applicant after his arrival in the United States.

As noted in our prior decision, current section 320 of the Act does not apply to the petitioner as he was over 18 years old on its effective date, February 27, 2001. Former section 321 of the Act applies to the applicant's case and, as stated in our June 18, 2010 decision, that section requires, in relevant part, that both parents naturalize prior to the child's eighteenth birthday. Contrary to counsel's claim, the record contains no evidence that the applicant's aunt naturalized prior to the applicant's eighteenth birthday. Thus, even if the applicant was adopted by his aunt and uncle, he cannot establish that he derived U.S. citizenship through them under former section 321 of the Act, or any other provision of law.

The applicant bears the burden of proof in these proceedings to establish the claimed citizenship by a preponderance of the evidence. Section 341 of the Act, 8 U.S.C. § 1452; 8 CFR § 341.2(c). The applicant has not met his burden of proof. Accordingly, the prior decision of the AAO will be affirmed and the application will remain denied.

ORDER: The June 18, 2010 decision of the Administrative Appeals Office is affirmed. The application remains denied.

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whether in the United Sates or elsewhere, and except as otherwise provided in section 320 and 321 of the title III, a child adopted in the United States, if such legitimation or adoption takes place before the child reaches the age of 16 years . . . and the child is in the legal custody of the legitimating or adopting parent or parents at the time of such legitimation or adoption.