

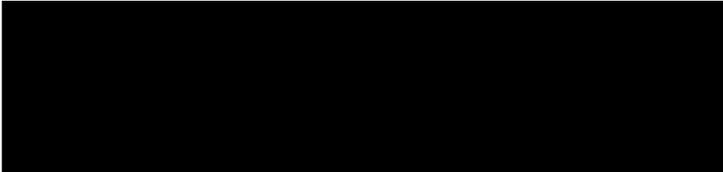
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U.S. Citizenship
and Immigration
Services

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FILE:



Office: ST. PAUL, MN

Date:

AUG 17 2007

IN RE:

Respondent:



APPLICATION:

Cancellation of Certificate of Citizenship under Section 342 of the Immigration and Nationality Act; 8 U.S.C. § 1453.

ON BEHALF OF RESPONDENT:



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 respondent's Certificate of Citizenship was canceled by the District Director, St. Paul, Minnesota, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the respondent [REDACTED] was born in Nigeria on July 24, 1982. Her birth certificate lists [REDACTED] and [REDACTED] as her parents. The respondent claims to have been adopted on December 14, 1992 in Nigeria by [REDACTED] [REDACTED] became a naturalized U.S. citizen on April 19, 1995. On February 17, 1998, the respondent obtained a Certificate of Citizenship based upon a claim of derivative citizenship as the adopted child of a naturalized U.S. citizen.

On August 6, 2002, the district director issued a notice of intent to cancel the respondent's Certificate of Citizenship. The notice was based on information obtained by the district director revealing that the respondent's biological father is [REDACTED]'s nephew. The notice further alleged that the respondent submitted a fraudulent adoption certificate. In accordance with the statute and regulations, the respondent was afforded the opportunity to respond to the district director's notice.

In response to the notice, the respondent denied the allegations that [REDACTED] was not her adoptive parent, that [REDACTED] was her biological father, or that the adoption certificate was fraudulent. The respondent was interviewed on June 17, 2004. Throughout the proceedings, the respondent submitted several documents including her hospital birth certificate, [REDACTED] birth certificate, an affidavit executed by [REDACTED], Nigerian court documents, letters from Nigerian attorneys, tax documents, and other affidavits by family members. Notably, the respondent submitted a copy of an Adoption Certificate, issued on January 7, 1993 by a Nigerian barrister, reflecting the respondent's adoption by [REDACTED] on September 6, 1983. The respondent also submitted a document entitled "Enrolment of Order" from the Customary Courts in Edo State, Nigeria certifying her adoption/guardianship as of December 14, 1992.

On July 19, 2006, the district director issued a decision canceling the respondent's Certificate of Citizenship. The district director's decision was based in part on the results of an investigation conducted by the U.S. Consulate in Nigeria and information received through the United States District Court. Based upon the evidence in the record, and listed in the decision, the district director found that the respondent's adoption certificate was invalid. The district director therefore concluded that the respondent's Certificate of Citizenship was fraudulently and illegally obtained because the respondent was not the adopted child of a naturalized U.S. citizen. The respondent's Certificate of Citizenship was canceled.

On appeal, the respondent maintains that the district director erred in not affording her an opportunity to examine the evidence against her and that the statements contained in the district director's decision are false. In support of her appeal, the respondent submits a Brief where counsel maintains that the Department of Homeland Security lacks authority to cancel the respondent's Certificate of Citizenship. Counsel also contends that the district director did not fairly evaluate the evidence submitted and did not give the respondent an opportunity to respond. Finally, counsel states that the district director unfairly characterized the respondent by implying that she was involved in a criminal matter. The respondent's appeal is accompanied by a letter from the Ministry of Justice, Edo State, Nigeria affirming that the Customary Courts in Nigeria have jurisdiction to issue orders of adoption.

Section 342 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1453, provides, in relevant part, that:

The [Secretary of the Department of Homeland Security] is authorized to cancel any certificate of citizenship . . . if it shall appear to [his] satisfaction that such document or record was illegally or fraudulently obtained from, or was created through illegality or by fraud practiced upon, him or the Commissioner or a Deputy Commissioner; but the person for or to whom such document or record has been issued or made shall be given at such person's last-known place of address written notice of the intention to cancel such document or record with the reasons therefore and shall be given at least sixty days in which to show cause why such document or record should not be canceled. The cancellation under this section of any document purporting to show the citizenship status of the person to whom it was issued shall affect only the document and not the citizenship status of the person in whose name the document was issued.

The regulations at 8 C.F.R. § 342 outline the process for cancellation of a certificate of citizenship under the Act.

At the outset, the AAO notes that the district director properly notified the respondent of her intent to cancel the Certificate of Citizenship and afforded the respondent an opportunity to respond as required by the Act and the regulations. The AAO further notes that the Department of Homeland Security, through U.S. Citizenship and Immigration Services, has statutory authority to cancel a Certificate of Citizenship where the Certificate was illegally or fraudulently obtained. *See* Section 342 of the Act, 8 U.S.C. § 1453. In this regard, the AAO notes that counsel's reliance on *Gorbach v. Reno*, 219 F.3d 1087 (9th Cir. 2000), is misplaced. *See* Respondent's Brief at 3. The Court in *Gorbach* enjoined administrative denaturalizations under section 340 of the Act, 8 U.S.C. § 1451, not cancellation under section 342 of the Act, 8 U.S.C. § 1453.

The AAO finds that the respondent was afforded the opportunity to respond to the district director's findings in accordance with the Act and the regulations. The AAO further finds that the district director properly evaluated the evidence submitted. The AAO does not find that the district director mischaracterized the respondent when she identified the United States District Court proceedings that revealed the inconsistencies in the respondent's case. The AAO notes that given the respondent's explanations regarding the testimony in those proceedings, it is clear that she was aware of the proceedings and the information gathered therein.

The AAO notes that the record contains a number of documents purporting to be the respondent's adoption certificate. The AAO further notes that there are discrepancies in the date of adoption reflected in those documents. The AAO has considered the evidence in the record, including the document submitted by the respondent in support of her appeal explaining that the Customary Courts in Edo State, Nigeria have jurisdiction to enter adoption decrees. The AAO notes that this document appears intended to overcome the district director's finding that only the Juvenile Court in Nigeria has jurisdiction to enter adoption decrees. The AAO notes, however, that according to the U.S. Department of State's Foreign Affairs Manual "[a]doption in Nigeria must be initiated from the Ministry of Social Services, not directly

with the court by the adoptive parents. Any adoption not done under the auspices of the Ministry of Social Services is not valid.” The AAO must therefore conclude that the adoption certificate provided by the respondent does not adequately establish that she was adopted by [REDACTED]

In order to derive U.S. citizenship from an adopted parent, a child must establish generally that she was residing in the United States as a lawful permanent resident in the custody of her naturalizing parent. *See* Section 321 of the former Act, 8 U.S.C. § 1432. The AAO finds that, absent a valid adoption, the respondent could not have established eligibility for a Certificate of Citizenship and her Certificate was therefore illegally procured.

The burden of proof in cancellation proceedings is on the government, and cancellation of a Certificate of Citizenship is authorized “if it shall appear to [the] satisfaction” of the Secretary of the Department Homeland Security” that the Certificate was illegally or fraudulently obtained. The AAO finds that the district director has met her burden of proof and that the respondent’s Certificate of Citizenship was properly canceled. The respondent’s appeal will therefore be dismissed.

ORDER: The appeal is dismissed.