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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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Date: **JAN 30 2012**

Office: HIALEAH, FL

File: 

IN RE: 

APPLICATION: Application for Certificate of Citizenship under section 320 of the Immigration and Nationality Act; 8 U.S.C. § 1431

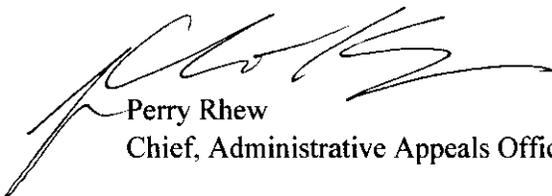
ON BEHALF OF APPLICANT: Self-represented

INSTRUCTIONS:

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, with a fee of \$630. 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.

Thank you,



Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Application for Certificate of Citizenship (Form N-600) was denied by the Field Office Director, Hialeah, Florida (the director), and is now before the Administrative Appeals Office (AAO) on appeal. The director's decision shall be withdrawn and the matter shall be remanded to the director for further action.

The record reflects that the applicant is a citizen of Jordan born in Saudi Arabia on [REDACTED] to married parents [REDACTED]. Neither parent was a U.S. citizen at the time of the applicant's birth. On [REDACTED] after divorcing the applicant's father, the applicant's mother married [REDACTED] (the applicant's step-father) in Jordan. On August 8, 2006, the applicant's step-father became a naturalized U.S. citizen. On [REDACTED] the applicant's mother was admitted to the United States as a lawful permanent resident; however, she has not since naturalized. On the same day, the applicant was admitted to the United States as a lawful permanent resident based on a Petition for Alien Relative (Form I-130) filed on her behalf by the applicant's step-father. The applicant contends that she derived U.S. citizenship through her step-father who adopted her and she seeks a Certificate of Citizenship pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The director determined that the applicant did not meet the requirements for issuance of a certificate of citizenship under section 320 of the Act because the applicant failed to provide evidence that she had been legally adopted by her step-father. The application was denied accordingly. *See Director's Decision*, dated September 29, 2011. On appeal, the applicant contends that her step-father filed documents with the court for adoption proceedings under U.S. law. *See Form I-290B*.

Section 320(a) of the Act applies to children born outside of the United States who are residing permanently in the United States, and provides 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.

Additionally, section 320(a) of the Act "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)." Section 320(b) of the Act, 8 U.S.C. § 1431(b).

Section 101(b)(1) of the Act, 8 U.S.C. § 1101(b)(1), defines the term "child" in relevant part as:

(E)(i) a child adopted while under the age of sixteen years if the child has been in the legal custody of, and has resided with, the adopting parent or parents for at least two years; or

(ii) subject to the same proviso as in clause (i), a child who: (I) is a natural sibling of a child described in clause (i) . . . ; (II) was adopted by the adoptive parent or parents of the sibling described in such clause or subparagraph; and (III) is otherwise described in clause (i), except that the child was adopted while under the age of 18 years[.]

Here, the applicant does not meet the definition of a child at either section 101(b)(1)(E)(i) or 101(b)(1)(E)(ii) of the Act because she was over the age of eighteen at the time of adoption. The term *adopted* as used in section 320(b) of the Act refers to a full, final and complete adoption. 8 C.F.R. § 320.1.

While there are Jordanian documents in the record pertaining to the applicant's biological father's consent to adopt and relating to physical custody of the applicant, such documentation does not reflect that the applicant had been legally adopted by her step-father because adoption is not legal in Jordan. *See Intercountry Adoption, U.S. Bureau of Consular Affairs, U.S. Department of State, Country Information-Jordan.*

On November 30, 2011, the Family Division of the Eleventh Judicial Circuit Court of Miami-Dade County, Florida granted a joint petition for adoption in which the court terminated the applicant's birth father's parental rights and declared the applicant and her sibling to be the legal children of the applicant's step-father. *See Final Judgment of Stepparent Adoption*, ordered [REDACTED]. The record reflects that the applicant was over the age of eighteen and the applicant's sibling was over the age of sixteen at the time the adoption was completed.¹ Accordingly, the applicant does not meet the definition of a "child" set forth in subsections 101(b)(1)(E)(i) and (ii) of the Act, and she cannot derive citizenship through her step-father under section 320(a) of the Act, as provided for at section 320(b) of the Act as an adopted child.

The applicant must meet her burden of proof by establishing the claimed citizenship by a preponderance of the evidence. 8 C.F.R. § 320.3. Here, the applicant has not met this burden. Accordingly, the applicant is not eligible for a certificate of citizenship under section 320 of the Act.

However, the record contains a copy of the applicant's U.S. passport. In *Matter of Villanueva*, 19 I&N Dec. 101, 103 (BIA 1984), the Board held that a valid U.S. passport is conclusive proof of U.S. citizenship. Specifically, the Board held that:

unless void on its face, a valid United States passport issued to an individual as a citizen of the United States is not subject to collateral attack in administrative immigration proceedings but constitutes conclusive proof of such person's United States citizenship.

¹ The applicant's sibling, [REDACTED]h, was born on March 26, 1994.

Id. Where, as here, the applicant has failed to establish statutory eligibility for U.S. citizenship, a Certificate of Citizenship cannot be issued. The U.S. Citizenship and Immigration Service's (USCIS) Adjudicator's Field Manual at § 71.1(e) instructs:

An unexpired United States passport issued for 5 or 10 years is now considered prima facie evidence of U.S. citizenship. Because it does not provide the actual basis upon which citizenship was acquired or derived, the submission of additional documentation may be required or the passport file may be requested. If after review there are differences or discrepancies between the USCIS information and the Passport Office records which would indicate that the application should not be approved, no action should be taken until the Passport Office has an opportunity to review and decide whether to revoke the passport.

The matter must therefore be remanded to the director to request that the Passport Office review and decide whether to revoke the applicant's passport. The director shall issue a new decision once the Passport Office's review is completed and, if adverse to the applicant, shall certify the decision to the AAO for review.

ORDER: The matter is remanded to the director for action consistent with this decision and for issuance of a new decision, which, if adverse to the applicant, shall be certified to the Administrative Appeals Office for review.