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FILE: [REDACTED] Office: DENVER, COLORADO Date: **AUG 18 2005**

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under § 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, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Denver, Colorado, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on December 11, 1986 in Belarus. The applicant's adoptive father (father) is a native-born U.S. citizen. The applicant's natural father, whose parental rights were terminated, appears not to be a U.S. citizen. The applicant's natural mother is not a U.S. citizen. The applicant entered the United States as a nonimmigrant child of the fiancée of a U.S. citizen on April 7, 2002. The applicant's father and natural mother are married to each other. The applicant was adopted by her U.S. citizen father on March 9, 2004 in Denver, Colorado, when she was seventeen years old. The applicant seeks a certificate of citizenship pursuant to § 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The record reflects that the applicant filed a Form N-600 Application for Certificate of Citizenship on November 2, 2004. On May 3, 2005 the district director concluded that the applicant had not been admitted to the United States as a lawful permanent resident; therefore, she did not meet the requirements set forth in § 320 of the Act. The district director also found that the applicant did not meet the definition of "child" set forth in § 101(c)(1) of the Act, because she was not adopted prior to her sixteenth birthday. The application was denied accordingly.

On appeal, the applicant asserts that she meets the definition of "child" set forth in § 101(b)(1)(E)(ii) of the Act, because she is the elder sister of a child adopted by the same father, and her sister was adopted when she was under sixteen years old and the applicant was under eighteen years old.

Section 320 of the Act was amended by the Child Citizenship Act of 2000 (CCA), and took effect on February 27, 2001. The CCA benefits all persons who had not yet reached their eighteenth birthdays as of February 27, 2001. Because the applicant was fourteen years old on February 27, 2001, she 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).

Section 101(b)(1)(E) of the Act states, in pertinent part, that the term "child" means an unmarried person under twenty-one years of age who is-

(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: Provided, That no natural parent of any such adopted child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act ; 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) or subparagraph (F)(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.

The applicant did not provide any evidence on appeal in response to the district director's finding that she had not been admitted for permanent residence. Thus, the applicant does not meet the requirement described at § 320(a)(3). In addition, the record does not contain any evidence establishing that the applicant has been in the legal custody of the adopting parent for at least two years, as required by clause (i) above. The AAO concludes that the applicant is not eligible for a certificate of citizenship under § 320 of the Act.

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. The applicant has not met her burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.