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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: NEW YORK, NEW YORK Date: **JAN 26 2005**

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under Section 1993 of the Revised Statutes of the United States, as amended by the Act of May 24, 1934.

ON BEHALF OF APPLICANT:

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, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant was born on August 21, 1936, in China. The applicant's father [REDACTED] was born in China on May 4, 1903. His mother, [REDACTED] was born in China on June 1, 1903, and the applicant's parents were married in China on March 16, 1924. The applicant presently seeks a certificate of citizenship pursuant to section 1993 of the Revised Statutes of the United States, as amended by the Act of May 24, 1934, 48 Stat. 797, based on the claim that he derived citizenship at birth through his U.S. citizen father.

The district director determined the applicant had failed to establish that one of his parents was a U.S. citizen when his application for citizenship was filed. Accordingly, the district director determined that the applicant did not qualify for automatic acquisition of citizenship under section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431. The district director's decision did not address whether the applicant had established that he derived U.S. citizenship at birth.

The AAO notes that section 320 of the Act, as amended by the Child Citizenship Act of 2000 (CCA), which took effect on February 27, 2001, permits a child born outside of the U.S. to automatically become a citizen of the United States upon fulfillment of the following conditions:

- (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.

Legal precedent 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. Because the applicant was over the age of eighteen on February 27, 2001, section 320 of the Act is not applicable to the applicant's case. See *Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001).

Counsel asserts on appeal that the applicant's paternal grandfather was born in the United States and that the applicant's father acquired U.S. citizenship at birth. Counsel asserts that the applicant was also born a U.S. citizen pursuant to section 1993 of the Revised Statutes of the United States, as amended. Counsel asserts further that the Immigration and Naturalization Service (Service, now Citizenship and Immigration Services, CIS) recognized the applicant as a U.S. citizen when he was admitted into the United States in 1951, and again in 2001, when the Service denied the applicant's N-400, Application for Naturalization (N-400 application) based on his existing U.S. citizenship status.

"The applicable law for transmitting citizenship to a child born abroad when one parent is a U.S. citizen is the statute that was in effect at the time of the child's birth." *Chau v. Immigration and Naturalization Service*, 247 F.3d 1026,1029 (9th Cir. 2000) (citations omitted). The applicant was born on August 21, 1936. Section 1993 of the Revised Statutes of the United States, as amended by the Act of May 24, 1934 (R.S. section 1993) is therefore applicable to the applicant's derivative citizenship claim.

R.S. section 1993 provides that a child:

[B]orn out of the limits and jurisdiction of the United States, whose father or mother or both at the time of the birth of such child is a citizen of the United States, is declared to be a citizen of the United States; but the rights of citizenship shall not descend to any such child unless the citizen father or citizen mother, as the case may be, has resided in the United States previous to the birth of such child.

Pursuant to R.S. section 1993, the applicant must therefore establish that his father (Mr. [REDACTED] was a U.S. citizen prior to his birth and that his father resided in the U.S. prior to his birth.

The AAO notes that [REDACTED] was born in China on May 4, 1903. In order to establish his U.S. citizenship, Mr. [REDACTED] must therefore satisfy the derivative citizenship provisions contained in the Act of February 10, 1885, 10 Stat. 604, which provides that a child born abroad to a U.S. citizen father is a U.S. citizen, provided the father resided in the U.S. at one point in his life.

In *Matter of V*, 6 I&N Dec. 1,5 (A.G. 1954), the Attorney General found that a minor's brief residence within the United States satisfied the residence requirements of R.S. section 1993. *See also, State ex rel. Phelps v. Jackson*, 79 Vt. 504, 519 (1907).

The present record contains a copy of the U.S. Certificate of Identification, issued to Mr. [REDACTED] at the port of entry in Boston, Massachusetts on May 31, 1925, stating that Mr. [REDACTED] is the son of a native U.S. citizen.¹

8 C.F.R. 341.2(c) states that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. In *Matter of E-M-*, 20 I&N Dec. 77 (Comm. 1989), the Commissioner indicated that in order to satisfy the preponderance of evidence standard, it is generally sufficient that the evidence establish that something is probably true.

The AAO finds that the information contained [REDACTED] U.S. Certificate of Identification establishes, by a preponderance of the evidence, that [REDACTED] father was born in the United States and that he was a U.S. citizen. The AAO notes that the U.S. Certificate of Identification, issued to Mr. [REDACTED] reflects that Mr. [REDACTED] was admitted into the United States on May 31, 1925. Thus, under *Matter of V, supra*, the applicant has established that his father also met U.S. residence requirements as set forth in R.S. section 1993.

The AAO finds that the cumulative evidence in the present matter establishes that the applicant's father was a U.S. citizen, and that he resided in the U.S. prior to the applicant's birth. The applicant has therefore established by a preponderance of the evidence that he derived U.S. citizenship from his father pursuant to R.S. section 1993, and the appeal will be sustained.

ORDER: The appeal is sustained.

¹ The AAO notes further that in a May 2, 2001, decision relating to an N-400 Application filed by the applicant, the district director found that a review of Service records established the applicant had derived U.S. citizenship at birth through his father.