U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: PHILADELPHIA, PA Date: JAN 31 2005

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship under Section 321 of the former Immigration and Nationality Act; 8 U.S.C. § 1432.

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 Interim District Director, Philadelphia, Pennsylvania. The matter is now before the Administrative Appeals Office (AAO) on appeal. The matter will be sustained.

The record reflects that the applicant was born on [redacted] in India. The applicant's father, [redacted] was born in India, and he became a naturalized United States (U.S.) citizen on [redacted], when the applicant was fifteen years old. The applicant's mother, [redacted] was born in India. The applicant claims that she became a naturalized U.S. citizen on February 13, 1996. The applicant's parents were married on June 22, 1977, in India, and the applicant was admitted into the U.S. as a lawful permanent resident on June 22, 1982, when he was two years old. The applicant seeks a certificate of citizenship pursuant to section 321 of the former Immigration and Nationality Act (the former Act), 8 U.S.C. § 1432.

The interim district director (IDD) determined that although the applicant's mother [redacted] had filed an application to become a naturalized U.S. citizen in January 1995, she had failed to comply with a March 1999, Immigration and Naturalization Service (Service, now, Citizenship and Immigration Services, CIS) request for fingerprinting. The IDD stated that [redacted] application for naturalization was subsequently denied by the Service on August 26, 2002, due to abandonment. The IDD thereby concluded that the applicant had failed to establish that both of his parents were U.S. citizens prior to his eighteenth birthday, or that he otherwise qualified for citizenship under section 321 of the former Act.

The applicant asserts on appeal that both his mother and father became naturalized citizens on February 13, 1996. In support of his assertion, the applicant submits a copy of the February 13, 1996 naturalization certificates for his mother and father. The applicant concludes that he therefore meets the requirements for citizenship under section 321 of the former Act.

Section 321 of the former Act provided, in pertinent part, that:

> (a) a child born outside of the United States of alien parents, or of an alien parent and a citizen parent who has subsequently lost citizenship of the United States, becomes a citizen of the United States upon fulfillment of the following conditions:
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> (1) The naturalization of both parents; or
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> (2) The naturalization of the surviving parent if one of the parents is deceased; or
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> (3) The naturalization of the parent having legal custody of the child when there has been a legal separation of the parents or the naturalization of the mother if the child was born out of wedlock and the paternity of the child has not been established by legitimation; and if-
>
> (4) Such naturalization takes place while said child is under the age of 18 years; and
>
> (5) Such child is residing in the United States pursuant to a lawful admission for permanent residence at the time of the naturalization of the parent last naturalized under clause (2) or (3) of this subsection, or thereafter begins to reside permanently in the United States while under the age of 18 years.

A review of the applicant's mother's alien file reflects that her alien registration number i[redacted] and that she was admitted into the United States as a lawful permanent resident under the name, [redacted], on June 22, 1982. [redacted] alien file reflects that she filed a Form N-400, Application for Naturalization (N-400 application) in Chicago, Illinois on January 25, 1995, under the name [redacted] The alien file also reflects that [redacted] N-400 application was approved by the Service District Office in Chicago on December 15, 1995. [redacted]'s alien file reflects that on December 15, 1995, the Service sent a letter addressed t[redacted] now [redacted] instructing Ms. [redacted] to appear for a Naturalization Oath Ceremony on February 13, 1996, at the Dirksen Federal Building, Ceremonial Court in Chicago, Illinois.[1]

[redacted] alien file contains a Service Certificate of Naturalization ([redacted], (alien registration numbe[redacted] prepared for [redacted] naturalization ceremony on February 13, 1996, at the U.S. District Court for the Northern District of Illinois in Chicago.[2] However, the Certificate of Naturalization is not signed by [redacted] alien file subsequently reflects that an August 26, 2002, letter from the Service, addressed to [redacted] and referring to [redacted] as [redacted], denied [redacted] application for naturalization because she failed to appear for fingerprinting pursuant to a Service request on March 12, 1999.

The applicant submitted a copy of a Certificate of Naturalization [redacted] issued by the Service to [redacted] February 13, 1996, through the United States District Court for the Northern District of Illinois, Chicago. The AAO notes that the Certificate of Naturalization also states that [redacted] registration number is [redacted] and the naturalization certificate is in all ways identical to the Certificate of Naturalization contained in [redacted] alien file, except for the fact that the certificate submitted by the applicant contains [redacted] signature, indicating that she was present at the naturalization ceremony and that she became a naturalized citizen on February 13, 1996.

Pursuant to 8 C.F.R. § 338.1 Execution and issuance of certificate:

> (a) Issuance. When an applicant for naturalization has taken and subscribed to the oath of allegiance in accordance with Secs. 337.1, 337.2 and 337.3 of this chapter, a Certificate of Naturalization, Form N-550, shall be issued by the Service at the conclusion of the oath administration ceremony. For each applicant appearing at a judicial oath administration ceremony pursuant to Sec. 337.8, the Service shall prepare the Certificate of Naturalization and forward it to the clerk of court sufficiently in advance of the ceremony to ensure the timely delivery on the date the oath administration ceremony is conducted.
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> (b) Execution of certificate. The certificate shall be issued to the applicant in his or her true, full, and correct name as it exists at the time of the administration of the oath of allegiance. The certificate shall show, under "former nationality," the name of the applicant's last

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[1] The AAO notes that [redacted] alien file contains a Petition for Name Change form indicating that [redacted] husband petitioned the District Court to change his name from "[redacted]" [redacted]'s alien file does not, however, contain a petition requesting a name change for herself. The AAO did not review [redacted] husband's alien file to see whether it contained information pertaining to [redacted] name change or her naturalization process.

[2] An AAO review of the alien file for [redacted] reflects, however, that the alien number belongs to an unrelated individual, and the [redacted] alien file contains no information or documentation relating to [redacted]

country of citizenship, as shown in the application and Service records, even though the applicant may be stateless at the time of admission to citizenship. Photographs shall be affixed to the certificate in the manner provided in part 333 of this chapter. The certificate shall be signed by the applicant. The Commissioner's signature shall be affixed to the certificate.

8 C.F.R. § 339.1 provides that:

It shall be the duty of a judge of a court that administers an oath of allegiance to ensure that such oath is administered to each applicant for naturalization who has chosen to appear before the court. The clerk of court shall issue to each person to whom such oath is administered the Certificate of Naturalization provided by the Service pursuant to Sec. 338.1 of this chapter. The clerk of court shall provide to each person whose name was changed as part of the naturalization proceedings, pursuant to section 336(e) of the Act, certified evidence of such name change.

[redacted] alien file reflects that her N-400 application was approved by the Service on December 15, 1995, and that on December 15, 1995, the Service sent [redacted] a letter notifying her to appear for her naturalization oath ceremony on February 13, 1996. The AAO notes that, although [redacted]'s alien file does not contain a signed Certificate of Naturalization by [redacted], the applicant has submitted an identical Certificate of Naturalization for [redacted] that is signed. The AAO notes further that the Service naturalization fingerprinting request was sent in 1999, four years after [redacted]'s N-400 application was stamped approved by the Service. The December 1995 approval stamp on [redacted]'s N-400 application was not altered by the Service, and there is no indication on [redacted]'s N-400 application to reflect that her approval was revoked or that her N-400 application was denied. The AAO additionally notes that [redacted] alien file contains discrepancies relating to her name and alien registration number, and that her alien file also contains information that appears to belong in her husband's alien registration file.

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 under the preponderance of evidence standard, it is generally sufficient that the proof establish that something is probably true.

Based on all of the factors discussed above, the AAO finds that the applicant has established by a preponderance of the evidence that his mother became a naturalized U.S. citizen on February 13, 1996, prior to his eighteenth birthday. The applicant has also established that his father became a naturalized U.S. citizen prior to his eighteenth birthday and that he meets the lawful admission for permanent residence requirements set forth in section 321 of the former Act. Accordingly, the applicant has established that he meets the requirements for citizenship set forth in section 321 of the former Act, and the appeal will be sustained.

ORDER: The appeal is sustained.