



U.S. Citizenship
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Services

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FILE:



Office: HOUSTON, TEXAS

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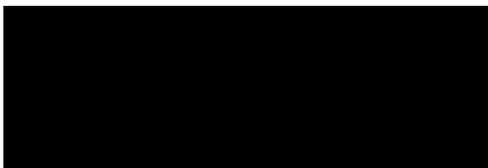
Applicant:



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:



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, Houston, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant was born in Colombia on September 11, 1977. The record reflects that the applicant was admitted into the United States pursuant to a lawful admission for permanent residence on April 5, 1988, at the age of ten, pursuant to a petition filed by his natural parents, [REDACTED] (mother) and [REDACTED] (father). The record contains a Colombian death certificate reflecting that the applicant's natural mother, [REDACTED] died on July 24, 1994 in a car accident. The death certificate reflects that [REDACTED] husband's name was [REDACTED] and that her parents' names were [REDACTED].

The applicant was adopted in Colombia by [REDACTED] on December 4, 1992, when he was fifteen years old. The applicant's subsequently issued birth certificate replaces his originally issued December 29, 1979, birth certificate, and reflects that [REDACTED] is the applicant's sole parent. [REDACTED] became a naturalized U.S. citizen on June 17, 1994, when the applicant was sixteen years old. [REDACTED] was divorced at the time of her naturalization. The applicant presently seeks a certificate of U.S. citizenship pursuant to section 321 of the former Immigration and Nationality Act (the former Act), 8 U.S.C. § 1432, based on the claim that he acquired U.S. citizenship through his adoptive mother on June 17, 1994, when she became a naturalized U.S. citizen.

The district director found the applicant had failed to establish that he met the definition of "child" for immigration purposes because he was not adopted in the United States as required by section 101(c) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(c). The district director found further that even if the applicant had met the definition of "child", he had nevertheless failed to establish that he met the section 321 of the former Act, 8 U.S.C. § 1432 requirement that he reside in the U.S. in the custody of his adoptive U.S. citizen parent at that the time of her naturalization as a U.S. citizen. The application was denied accordingly.

On appeal, counsel asserts that the applicant qualifies for consideration under section 321 of the former Act because he meets section 321(a)(4) and (5) requirements and because he has only one parent with legal custody and thus meets section 321(a)(3) of the former Act requirements. Counsel additionally asserts that the applicant meets the definition of "child" contained in section 101(c) of the Act, based on a section 321 of the former Act exception contained in the provision, and based on legal case law and U.S. Department of State policy. Counsel asserts further that the evidence in the record establishes the applicant meets section 321(b) of the former Act requirements that he reside in the custody of his adoptive mother at the time of her naturalization as a U.S. citizen.

Section 321 of the former Act provides in pertinent part that:

- (a) A child born outside of the United States of alien parents . . . becomes a citizen of the United States upon fulfillment of the following conditions:
- (1) The naturalization of both parents; or
 - (2) The naturalization of the surviving parent if one of the parents is deceased; or

(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 such child is under the age of eighteen 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 (1) of this subsection, or the parent naturalized under clause (2) or (3) of this subsection, or thereafter begins to reside permanently in the United States while under the age of eighteen years.

(b) Subsection (a) of this section shall apply to an adopted child only if the child is residing in the United States at the time of naturalization of such adoptive parents or parents, in the custody of his adoptive parent or parents, pursuant to a lawful admission for permanent residence. (Emphasis added).

The AAO finds that the applicant does not meet the statutory requirements for consideration under section 321 of the former Act. The requirements set forth in sections 321(a)(1) and (a)(2) of the former Act do not apply to the applicant's case. Moreover, although counsel argues that the applicant meets the statutory requirements of section 321(a)(3) of the former Act because his Colombian adoption decree does not mention a father and reflects that [REDACTED] is his sole legal parent, the AAO finds that the additional statutorily mandated section 321(a)(3), out-of-wedlock or legal separation of parents requirements have clearly not been met or established in the applicant's case.

The AAO additionally finds that the applicant has failed to establish that he meets the definition of "child" as set forth in section 101(c) of the Act.

Section 101(c) of the Act provides in pertinent part that:

(c) As used in title III-

(1) The term "child" means an unmarried person under twenty-one years of age and includes a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in the United States or elsewhere, **and, except as otherwise provided in sections 320, and 321 of title III, a child adopted in the United States**, if such legitimation or adoption takes place before the child reaches the age of 16 years (except to the extent that the child is described in subparagraph (E)(ii) or (F)(ii) of subsection (b)(1)), and the child is in the legal custody of the legitimating or adopting parent or parents at the time of such legitimation or adoption. (Emphasis added).

The AAO notes the adoption decree contained in the record reflects that the applicant was adopted in Colombia on December 4, 1992, and it is undisputed that the applicant was adopted outside of the United

States. Moreover, the AAO finds that section 101(c) of the Act does not provide an exception to the “adopted in the United States” requirement for section 321 of the former Act purposes. Rather, the AAO finds that the section 101(c) of the Act language stating that:

[E]xcept as otherwise provided in sections 320 and 321 of title III, a child adopted in the United States, if such . . . adoption takes place before the child reaches the age of sixteen years, and the child is in the legal custody of the . . . adopting parent or parents at the time of such . . . adoption

Imposes additional, rather than fewer, requirements for section 321 of the former Act cases, in that section 321(b) of the former Act additionally requires that section 321(a) applies to an adopted child:

[O]nly if the child is residing in the United States at the time of naturalization of such adoptive parent or parents, in the custody of his adoptive parent or parents, pursuant to a lawful admission for permanent residence.

The AAO also finds counsel’s assertion that legal case law and U.S. Department of State policy recognize an exception to section 101(c) of the Act “adoption in the United States” requirements, to be unconvincing. The Board of Immigration Appeals legal cases and Foreign Affairs Manual provisions referred to by counsel discuss the statutory requirements of section 101(b)(1)(E) of the Act. They do not discuss the statutory requirements of section 101(c) of the Act.

The AAO notes that section 101(b)(1)(E) of the Act defines “child” for title I and II non-immigrant and immigrant purposes, while section 101(c) of the Act separately defines “child” for title III naturalization and citizenship purposes. The AAO notes further that section 101(b)(1)(E) of the Act does not contain language requiring a child to be adopted in the United States. Section 101(b)(1)(E) of the Act provides instead that the term “child” means for title I and II purposes, an unmarried person under twenty-one years of age who is, “[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.”

Even if the applicant did qualify as a “child”, and did qualify for consideration under section 321 of the former Act, the AAO finds that the evidence in the record fails to establish by a preponderance of the evidence that the applicant met the section 321(b) requirement that he reside in the custody of his adoptive mother at the time of her naturalization as a U.S. citizen in June 1994.

8 C.F.R. 341.2(c) states that the burden of proof shall be on the claimant to establish his or her 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.

The AAO notes that the present record contains conflicting evidence relating to whom the applicant resided with subsequent to his adoption and at the time of [REDACTED] naturalization. The applicant’s December 1992, adoption decree indicates that the applicant was abandoned by his parents prior to his adoption in Colombia. An October 24, 2000 psychological report submitted by the applicant, however, reflects that the applicant resided with his natural mother, his sister and his stepfather until his natural mother’s death in July 1994 (subsequent to [REDACTED] naturalization as a U.S. citizen). The report also indicates that the

applicant related to the psychologist that he believed his problems started “right after a terrible tragedy that took place on the pleasure trip that he, his mother and sister made to Colombia in 1994.” This further undermines counsel’s assertion that the applicant had severed all ties to his natural mother at the time of his adoption in 1992.

An apartment lease for [REDACTED] signed by [REDACTED] in May 1992, and submitted by the applicant, reflects that the applicant’s name is contained on the lease. It is noted, however, that the applicant’s name was added, along with that of his grandmother, [REDACTED] and another family member, in different handwriting and on an unknown date. It is also noted that the address on the lease is the same address noted on his Form I-698, Application to Adjust Status, filed on November 7, 1989. He adjusted status along with his natural parents, [REDACTED]. They were presumably living at this address with the applicant. On his Form EOIR-42A, submitted on October 12, 2000 the applicant indicated that he had lived at the [REDACTED] from 1981 (when he first arrived in the United States with his natural parents) until 1996. There is no indication that his natural mother lived anywhere else prior to her death in 1994. The lease does not provide evidence that the applicant was residing in the custody of his aunt/adopted mother.

Based on the discrepancies in the record, the AAO finds that the applicant failed to establish by a preponderance of the evidence that he resided in [REDACTED] custody when she became a naturalized U.S. citizen on June 17, 1994.

For all of the above stated reasons, the AAO finds that the applicant failed to establish that he qualifies for citizenship under section 321 of the former Act. His appeal will therefore be dismissed.

ORDER: The appeal is dismissed.