



U.S. Citizenship
and Immigration
Services

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FILE:

Office: HONOLULU, HI

Date: NOV 30 2006

IN RE:

Applicant:

APPLICATION: Application for Certificate of Citizenship pursuant to Section 320 of the Immigration and Nationality Act, 8 U.S.C. § 1431

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, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Honolulu, Hawaii 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 September 4, 1978 in The Philippines. The applicant's adoptive mother, [REDACTED] was born in The Philippines on February 12, 1938 and became a naturalized U.S. citizen on July 4, 1986. The applicant's adoptive father, [REDACTED] now deceased, was also born in The Philippines and became a naturalized U.S. citizen on September 14, 1990. The applicant was admitted into the United States as a lawful permanent resident on December 17, 1995, when she was 17 years old. The applicant seeks a certificate of citizenship pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431, as amended by the Child Citizenship Act (CCA) of 2000.

The district director denied the applicant's Form N-600, Application for Certificate of Citizenship, because she was over the age of 18 on February 27, 2001, the date on which the provisions of the Child Citizenship Act of 2000 took effect. On appeal, counsel contends that the applicant has acquired U.S. citizenship because both her adoptive parents naturalized, she was adopted at the age of 12 years and entered the United States when she was 17 years of age, residing in the legal custody of her adoptive mother. However, as stated by the director, the provisions of the CCA benefit only those persons who had not yet reached their 18th birthdays as of February 27, 2001. Because the applicant was 22 years old on February 27, 2001, she does not meet the age requirement for benefits under the amended provisions of section 320 of the Act.

Instead, the applicant must establish her claim to derivative citizenship under former section 321 or 322 of the 1952 Immigration and Nationality Act (1952 Act), as amended, the statutory requirements for the acquisition of citizenship by adopted children of naturalized citizens prior to February 27, 2001. The AAO will first consider whether the applicant qualifies for a certificate of citizenship under former section 321 of the Act, repealed by the CCA as of February 27, 2001. Any person who would have acquired automatic citizenship under its provisions prior to February 27, 2001 may apply for a certificate of citizenship at any time. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001).

Former section 321 of the Act, 8 U.S.C. § 1432, provided 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:

- (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 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 (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 18 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 parent or parents, in the custody of his adoptive parent or parents, pursuant to a lawful admission for permanent residence.

As defined in section 101(b)(1)(E) of the Act, 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

The record establishes that the applicant's adoption took place in The Philippines on August 30, 1991, when the applicant was under 16 years of age and that both parents were naturalized prior to her 18th birthday. However, the applicant was not admitted to the United States as a lawful permanent resident until December 17, 1995. She was, therefore, not residing in the United States as a lawful permanent resident on the date of her adoptive father's 1990 naturalization and has not established eligibility for a certificate of citizenship under section 321 of the 1952 Act, as amended.

The applicant also fails to qualify for U.S. citizenship under former section 322 of the 1952 Act, as amended, which provided that:

(a) A parent who is a citizen of the United States may apply to the Attorney General [now the Secretary, Homeland Security, ["Secretary"]] for a certificate of citizenship on behalf of a child born outside the United States. The Attorney General [Secretary] shall issue such a certificate of citizenship upon proof to the satisfaction of the Attorney General [Secretary] that the following conditions have been fulfilled:

- (1) At least one parent is a citizen of the United States, whether by birth or naturalization.
- (2) The child is physically present in the United States pursuant to a lawful admission.
- (3) The child is under the age of 18 years and in the legal custody of the citizen parent.

- (b) Upon approval of the application . . . [and] upon taking and subscribing before an officer of the Service within the United States to the oath of allegiance required by this chapter of an applicant for naturalization, the child shall become a citizen of the United States and shall be furnished by the Attorney General [Secretary] with a certificate of citizenship.
- (c) Subsection (a) of this section shall apply to the adopted child of a United States citizen adoptive parent if the conditions specified in such subsection have been fulfilled.

The AAO notes that, whether or not an applicant satisfies the requirements set forth in former section 322(a) of the Act, section 322(b) required that an applicant also establish that his or her application for citizenship was approved by Citizenship and Immigration Service (CIS) prior to the applicant's eighteenth birthday, and that the applicant had taken an oath of allegiance prior to turning eighteen. The applicant in the instant case has not met the requirements set forth in former section 322(b) of the Act as CIS did not approve her certificate of citizenship application before she turned eighteen on September 8, 1996, and she did not take an oath of allegiance prior to that date.

For the reasons previously discussed, the applicant has not established that she is eligible for a certificate of citizenship.

The regulation at 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. The applicant has not met her burden of proof. The appeal will, therefore, be denied.

ORDER: The appeal is dismissed.