



U.S. Citizenship  
and Immigration  
Services

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FILE:

[REDACTED]

Office: CHICAGO

Date: SEP 20 2006

IN RE:

Applicant:

[REDACTED]

APPLICATION:

Application for Certificate of Citizenship under Section 320 of the Immigration and Nationality Act; 8 U.S.C. § 1431.

ON BEHALF OF APPLICANT:

[REDACTED]

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

The record reflects that the applicant was born in Bosnia on March 18, 1994. The applicant's father, [REDACTED] was born in Bosnia on May 5, 1955, and he became a naturalized U.S. citizen on May 14, 2003, when the applicant was nine years old. The applicant's mother was born in Bosnia on April 13, 1958, and the applicant has not indicated that she is a U.S. citizen. The applicant presently seeks a certificate of citizenship under section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The district director concluded that the applicant was ineligible for a certificate of citizenship under section 320 of the Act because he was not residing in the United States pursuant to a lawful admission for permanent residence, as required by section 320(a)(3) of the Act. The application was denied accordingly.

On appeal, counsel for the applicant asserts that the applicant is eligible for a certificate of citizenship under section 320 of the Act, as he was admitted to the United States pursuant to a refugee resettlement program as a permanent resident in April 1997. *Brief in Support of Appeal*, dated July 29, 2005. Counsel further states that the district director made inconsistent statements regarding whether the applicant has a U.S. citizen parent, despite the fact that the applicant's father is a naturalized citizen. *Id.* at 3-4.

The record contains a brief from counsel; a copy of the applicant's father's naturalization certificate; a copy of a document from Church World Service reflecting that the applicant was accepted into a refugee resettlement program, and he was admitted into a U.S. Quarantine Station on April 23, 1997; a copy of the applicant's birth certificate; a copy of the applicant's Form I-94 Departure Record, and; documentation relating to the applicant's Forms I-485 applications for adjustment of status. The entire record was considered in rendering this decision.

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 have not yet reached their eighteenth birthdays as of February 27, 2001. Because the applicant was six years old on February 27, 2001, he 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.

The applicant filed his Form N-600, Application for Citizenship, on November 3, 2004. The record reflects that, though the applicant was present in the United States, he was not yet admitted as a permanent resident.

As noted by the district director, the applicant filed a Form I-485 application to adjust his status on August 13, 1998, yet it was denied. The applicant filed a second Form I-485 application on January 18, 2006, after the date that the district director denied the present Form N-600 application. The applicant's second Form I-485 application was approved on May 10, 2006. Thus, the applicant is now a permanent resident in the United States.

Accordingly, it appears that the applicant presently meets the requirements of section 320 of the Act, and the record suggests that he is eligible for a certificate of citizenship on that basis. However, an applicant must qualify for a benefit sought as of the date of filing an application. The applicant was not a permanent resident at the time he filed his Form N-600 application, or at the time the district director issued his denial. In order to obtain a certificate of citizenship under section 320 of the Act, an applicant must be a permanent resident in the United States. Section 320(a)(3) of the Act. As the applicant was not a permanent resident on the date he filed his application, the application may not be approved. For that reason, the appeal must be dismissed.

Counsel states that the district director made inconsistent statements regarding whether the applicant has a U.S. citizen parent, despite the fact that the applicant's father is a naturalized citizen. Upon close examination of the district director's decision, the AAO acknowledges that the district director highlighted sections (a)(1) and (a)(3) of 320 of the Act, implying that the applicant failed to meet the covered criteria. As section 320(a)(1) of the Act requires an applicant to have at least one parent who is a U.S. citizen, the decision implies that the applicant did not show that his father is a U.S. citizen. However, as counsel points out, the district director noted that the applicant's father is a citizen of the United States later in the decision. The AAO does not find that the district director concluded that the applicant's father is not a U.S. citizen, and the applicant was not prejudiced but the district director's highlighting of section 320(a)(1) of the Act.

It is further noted that the applicant is not prejudiced by the dismissal of the present appeal or the denial of his Form N-600 application. He may file a new Form N-600 application based on his current circumstances.

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 his burden. The appeal will therefore be dismissed.

**ORDER:** The appeal is dismissed.