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U.S. Citizenship
and Immigration
Services

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FILE:

Office: VERMONT SERVICE CENTER

Date: AUG 17 2007

IN RE:

Applicant:

APPLICATION:

Application for Certificate of Citizenship under 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 Director, Vermont Service Center, 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 December 27, 1988 in China. The applicant's parents, as indicated in his birth certificate, are [REDACTED] and [REDACTED]. The applicant's mother married [REDACTED], naturalized U.S. citizen, on October 15, 2003. The applicant was admitted to the United States as a lawful permanent resident on May 5, 2006 on the basis of an approved petition filed on his behalf by his step-father. The applicant presently seeks a certificate of citizenship pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432, claiming that he acquired U.S. citizenship through his step-father.

The director denied the applicant's citizenship claim upon finding that the statute did not permit acquisition of U.S. citizenship through a step-parent. The application was denied accordingly.

On appeal, the applicant claims that he was adopted on [REDACTED] and therefore may acquire citizenship as an adopted child of [REDACTED]. See Statement of the Applicant on Form I-290B, Notice of Appeal.

The definition of "child" applicable to the citizenship and nationality provisions in Title III of the Act is contained in section 101(c) of the Act, 8 U.S.C. § 1101(c), and provides as follows:

...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 section 320 and 321 of the 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 . . . and the child is in the legal custody of the legitimating or adopting parent or parents at the time of such legitimation or adoption.

In contrast to Section 101(b) of the Act, 8 U.S.C. § 1101(b), the definition of "child" for Title III purposes does not include a "step-child."

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 had not yet reached their 18th birthdays as of February 27, 2001. Because the applicant was 13 years old on February 27, 2001, he meets the age requirement for benefits under the CCA.

Section 320 of the Act, 8 U.S.C. § 1431, 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.

- (b) Subsection (a) shall apply to a child adopted by a United States citizen parent if the child satisfies the requirements applicable to adopted children under section 1101(b)(1) of this title.

The applicant was admitted to the United States as a lawful permanent resident on May 5, 2006, at the age of 17. The applicant's parents are not U.S. citizens. The applicant's step-father is a U.S. citizen. The applicant claims that he acquired U.S. citizenship from his step-father. The AAO notes that there is no evidence in the record suggesting that the applicant's step-father adopted the applicant or that the applicant otherwise satisfies the requirements of section 1101(b)(1) of the Act, 8 U.S.C. § 1101(b)(1). The record contains a Certificate of Relationship, dated November 7, 2003, indicating that the applicant is the step-child of [REDACTED]. This document does not establish that the applicant was adopted. Rather, the document clearly indicates that the applicant is [REDACTED] step-child. The Act does not provide for derivation or acquisition of U.S. citizenship through a step-parent. Therefore, the applicant cannot acquire U.S. citizenship from his step-father. The AAO concludes that the applicant is ineligible to acquire or derive citizenship under any provision of the Act, including section 320 of the Act, 8 U.S.C. § 1431.

It is well established that "[t]here must be strict compliance with all the congressionally imposed prerequisites to the acquisition of citizenship." *Fedorenko v United States*, 449 U.S. 490, 506 (1981). 8 C.F.R. § 341.2(c) provides that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. The applicant in the present case has not met his burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.¹

¹ The AAO notes that the present decision is without prejudice to the applicant's filing, if eligible, an N-400, Application for Naturalization, pursuant to section 316 of the Act, 8 U.S.C. § 1427.