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U.S. Citizenship
and Immigration
Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

FEB 26 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:

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California 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 in Brazil on April 3, 1987. The applicant does not assert, and the record does not reflect, that her mother is a U.S. citizen. On January 21, 2003, the applicant's mother married [REDACTED] (the applicant's stepfather) was born in the United States on August 26, 1959, and he is a U.S. citizen. The applicant seeks a certificate of citizenship under section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431, based on the U.S. citizenship of her stepfather.

The district director concluded that the applicant failed to show that she is the child of a U.S. citizen parent, as required by section 320 of the Act. The application was denied accordingly.

On appeal, the applicant's stepfather explains that he is the legal guardian of the applicant, and that the applicant's mother was awarded sole custody of the applicant in a divorce settlement. *Statement from Applicant's Father on Form I-290B*, dated August 1, 2006. The applicant's stepfather indicates that he was advised that it was unnecessary for him to formally adopt the applicant in order for her to derive citizenship from him. *Id.*

The record contains, in pertinent part, a statement from the applicant's stepfather on Form I-290B; a copy of the applicant's passport; a copy of the applicant's mother's divorce decree; a copy of the marriage certificate for the applicant's mother and stepfather; a copy of the applicant's birth certificate, and; a copy of the applicant's stepfather's birth certificate. 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 under age eighteen on February 27, 2001, she 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.

Section 101(c) of the Act provides the following:

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

Pursuant to section 101(c)(1) of the Act, a stepchild does not constitute the "child" of a stepparent for the purpose of deriving citizenship under section 320 of the Act. In the present matter, the applicant's stepfather has not adopted the applicant as contemplated by section 101(c)(1) of the Act. Nor can the applicant be legitimated by her stepfather, as he is not her natural parent. *See* section 101(c) of the Act. Accordingly, the applicant has not derived citizenship from her stepfather. The record does not show that the applicant qualifies for a certificate of citizenship under another provision of law.

The applicant's stepfather indicates that he was advised that it was unnecessary for him to adopt the applicant. It is noted that a stepchild is considered the "child" of her stepparent for the purposes of Title I and II of the Act, including applications for permanent residence in the United States. Section 101(b)(1) of the Act. However, as discussed above, section 101(c)(1) applies in citizenship matters that fall under Title III of the Act, including the instant application under section 320 of the Act.

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. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.