

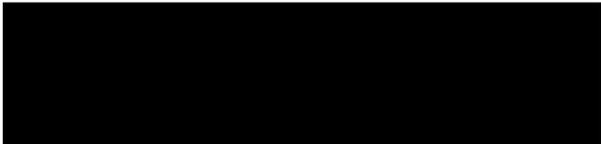
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U.S. Citizenship
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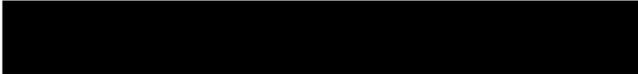
OFFICE: CALIFORNIA SERVICE CENTER

Date:

FEB 26 2007

IN RE:

APPLICANT:



APPLICATION: Application for Certificate of Citizenship under Section 320 and 321 of the former
Immigration and Nationality Act; 8 U.S.C. §§ 1431 and 1432.

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 on June 17, 1945 in Poland. The applicant's natural parents were not U.S. citizens. The applicant's mother, [REDACTED] was a native of Poland, and the applicant does not assert that she has become a United States citizen. The applicant's natural father has not been identified. On September 12, 1956, the applicant and his mother entered the United States as permanent residents. On November 24, 1956, the applicant's mother married [REDACTED] who was at the time a citizen of Poland. Mr. [REDACTED] adopted the applicant as his son on October 29, 1958. Mr. [REDACTED] became a naturalized U.S. citizen on July 7, 1959. As the applicant did not acquire U.S. citizenship at birth through his natural parents, he filed a Form N-600, Application for Citizenship, to recognize his citizenship based on the fact that his adoptive father is a U.S. citizen.

The director concluded that the applicant was ineligible for a certificate of citizenship, as he did not meet the requirements of former 321 of the Act, or present section 320 of the Act. *Decision of the Director*, dated July 24, 2006.

The record contains, in pertinent part, a statement from the applicant; a copy of the applicant's father's naturalization certificate; a copy of the applicant's wife's naturalization certificate; a copy of the applicant's birth certificate; a copy of the applicant's parents' marriage certificate; a copy of the applicant's marriage certificate; a copy of a document that reflects the applicant's entry to the United States as a permanent resident, and; copies of documents in connection with the applicant's adoption. The entire record was reviewed and considered in rendering this decision.

Sections 320 and 322 of the former Act were amended by the Child Citizenship Act of 2000 (CCA), which took effect on February 27, 2001, and section 321 of the former Act, 8 U.S.C. § 1432, was repealed. Section 320 of the Act, as amended, permits a child born outside of the U.S. to automatically become a citizen of the United States upon fulfillment of the following conditions:

- (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 AAO notes that legal precedent decisions have clearly stated that the provisions of the CCA are not retroactive and that the amended provisions of the Act apply only to persons who were not yet eighteen years old as of February 27, 2001. Because the applicant was over the age of eighteen on February 27, 2001, the AAO finds that he is not eligible for the benefits of section 320 of the amended Act. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001).

Section 321 of the former Act provided, in pertinent part:

(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 (2) or (3) of this subsection, or thereafter begins to reside permanently in the United States while under the age of 18 years.

Former section 321 of the Act requires both of an applicant's parents to have become U.S. citizens prior to the applicant's 18th birthday. Former section 321(a)(4) of the Act. As noted above, the record does not show that the applicant's mother became a U.S. citizen. Accordingly, the applicant did not meet the requirements of former sections 321(a)(1) and (4) of the Act, as both of his parents did not become naturalized U.S. citizens prior to his eighteenth birthday.

Based on the foregoing, the applicant has not shown that he derived citizenship from his father by operation of law, such that he is eligible for a certificate of citizenship pursuant to the present application.¹

The regulation at 8 C.F.R. § 341.2(c) states that the burden of proof shall be on the applicant to establish his or her claimed citizenship by a preponderance of the evidence. The applicant has not met his burden in the present matter. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.

¹ The denial of the applicant's Form N-600 application is without prejudice, and he may apply for naturalization under section 334 of the Act.