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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

E₂

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FILE:



Office: PHOENIX, AZ

Date: JAN 04 2007

IN RE:

Applicant:



APPLICATION: Application for Certificate of Citizenship pursuant to former 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 District Director, Phoenix, Arizona 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 January 14, 1947 in Toronto, Ontario, Canada. The applicant's mother, [REDACTED] was born in Iowa on April 11, 1903. The applicant's father, [REDACTED] was born in Scotland and became a naturalized U.S. citizen on January 6, 1959, when the applicant was 11 years old. The applicant's parents were married on April 22, 1937. The record does not indicate that the applicant has been admitted into the United States as a lawful permanent resident. The applicant seeks a certificate of citizenship pursuant to former section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The district director found that the applicant, although notified that she was required to submit proof of her parents' marriage, had failed to do so. He also noted the applicant's failure to appear for an interview scheduled for March 18, 2004. The application was denied accordingly.

On appeal, the applicant submits a copy of her parents' marriage certificate dated April 22, 1937. Accordingly, the only issue before the AAO is whether the evidence of record demonstrates that the applicant is eligible for a certificate of citizenship under former section 320 of the Act based on the 1959 naturalization of her father. .

Although section 320 of the Act was amended by the Child Citizenship Act of 2000 (CCA), which took effect on February 27, 2001, the CCA benefits only those persons who were not yet 18 years of age on that date. Because the applicant was over 18 years of age on February 27, 2001, she must establish her eligibility under the requirements of former section 320 of the Act.

Former section 320 of the Act, 8 U.S.C. § 1431 provided that:

(a) A child born outside of the United States, one of whose parents at the time of the child's birth was an alien and the other of whose parents then was and never thereafter ceased to be a citizen of the United States, shall, if such parent is naturalized, become a citizen of the United States, when

(1) such naturalization takes place while such child is under the age of 18 years; and

(2) such child is residing in the United States pursuant to a lawful admission for permanent residence at the time of naturalization or thereafter and begins to reside permanently in the United States while under the age of 18 years.

The record establishes that the applicant's mother was born a U.S. citizen and that her father's naturalization occurred prior to her 18th birthday. Accordingly, to be eligible for a certificate of citizenship, the applicant need only establish that, at the time her father naturalized, she was residing in the United States as a lawful permanent resident or began to do so before she reached 18 years of the age. However, the AAO's review of the evidence of record and of the appropriate Citizenship and Immigration Services (CIS) data bases does not indicate that the applicant holds the status of lawful permanent resident. The applicant does not claim to be a lawful permanent

resident. Her Form N-600, Application for Certificate of Citizenship indicates that she arrived in the United States on October 21, 1954 with her parents, but not as the beneficiary of an immigrant visa. Accordingly, the record does not establish that the applicant is eligible for a certificate of citizenship under former section 320 of the Act.

As the applicant was born outside the United States to a U.S. citizen, the AAO has also considered whether she might be eligible for a certificate of citizenship under section 201(g) of the Nationality Act of 1940 (1940 Act). “The applicable law for transmitting citizenship to a child born abroad when one parent is a U.S. citizen is the statute that was in effect at the time of the child’s birth.” *Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1029 (9th Cir., 2000) (citations omitted). As the applicant was born in 1947, she must satisfy the requirements of section 201(g) of the 1940 Act, the nationality law in place at the time of her birth.

Section 201(g) of the 1940 Act states in pertinent part that:

A person born outside of the United States and its outlying possessions of parents one of whom is a citizen of the United States who, prior to the birth of such person, has had ten years residence in the United States or one of its outlying possessions, at least five of which were after attaining the age of sixteen years, the other being an alien.

Therefore, to acquire U.S. citizenship through her mother, the applicant must establish that her mother, prior to her birth, resided in the United States for ten years, and that five of those years occurred after April 11, 1919, when her mother would have turned sixteen.

The applicant’s Form N-600 indicates that the applicant’s mother lived in the United States from 1903-1939 and 1952 until her death in 2002. While the residence claimed between 1903-1939 would satisfy the requirements of section 201(g) of the 1940 Act, there is no evidence in the record that documents the U.S. residence of the applicant’s mother. The regulation at 8 C.F.R. § 322.3(b)(1)(vii) lists examples of the type of documentation required to establish the physical presence of U.S. citizen parents or grandparents in the United States, including school records, military records, utility bills, medical records, deeds, mortgages, contracts, insurance policies, receipts, or attestations by churches, unions, or other organizations. In that the record offers no proof that the applicant’s mother lived in the United States from her birth in 1903 until 1939, the applicant has not established eligibility for a certificate of citizenship based on her birth to a U.S. citizen mother under section 201(g) of the 1940 Act. Accordingly, the appeal will be dismissed.

The regulation at 8 C.F.R. § 341.2(c) states that the burden of proof shall be on the applicant to establish the claimed citizenship by a preponderance of the evidence. For the reasons discussed above, the evidence of record does not meet this standard.

ORDER: The appeal is dismissed.