



U.S. Citizenship
and Immigration
Services

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FILE:

Office: CHICAGO, IL

Date: JUN 01 2007

IN RE:

Applicant:

APPLICATION: Application for Certificate of Citizenship under Section 321 of the former Immigration and Nationality Act, 8 U.S.C. § 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 District Director, Chicago, Illinois. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the application denied.

The record reflects that the applicant was born on January 19, 1949, in Germany. The applicant's father became a naturalized U.S. citizen on July 17, 1956. The applicant's mother became a naturalized U.S. citizen on April 3, 1956. The applicant was seven years old when her parents became naturalized citizens. The applicant's parents were married on September 30, 1946. The applicant presently seeks a certificate of citizenship pursuant to section 321 of the former Immigration and Nationality Act (the former Act), 8 U.S.C. § 1432.

The district director determined that the applicant was ineligible for a certificate of citizenship under section 321 of the former Act, or section 320 of the Immigration and Nationality Act, as amended (the Act), 8 U.S.C. § 1431, because she did not present evidence of her father's naturalization as a U.S. citizen, or of her admission into the United States as a lawful permanent resident. The application was denied accordingly.

On appeal, the applicant submits evidence of her father's naturalization as a U.S. citizen, and she asserts her belief that she automatically became a U.S. citizen when both of her parents became citizens in 1956.

The AAO notes that section 320 of the former Act, 8 U.S.C. § 1431, was amended by the Child Citizenship Act of 2000 (CCA), and took effect on February 27, 2001. The provisions of the CCA are not retroactive and section 320 of the Act, as amended applies only to persons who were not yet eighteen years old as of February 27, 2001. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). Because the applicant was over the age of eighteen on February 27, 2001, she is not eligible for consideration under section 320 of the Act.¹

The CCA repealed section 321 of the former Act. Nevertheless, all persons who acquired citizenship automatically under section 321 of the former Act, as previously in force prior to February 27, 2001, may apply for a Certificate of Citizenship at any time. *See Matter of Rodriguez-Tejedor, supra.*

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

- (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 Section 320 of the Act, as amended provides 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.

- (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.

The applicant has established that both of her parents became naturalized U.S. citizens prior to the applicant's eighteenth birthday. The applicant additionally established that her parents were married at the time of her birth and at the time of their naturalization as U.S. citizens. Accordingly, the applicant has established that she meets the requirements set forth in section 321(a)(1) and (4) of the former Act. The record contains no evidence, however, to indicate or establish that at any time prior to her eighteenth birthday, the applicant resided in the United States pursuant to a lawful admission for permanent residence. Moreover, an AAO review of Immigration Service computer database files under the applicant's present name and former name [REDACTED] and [REDACTED] revealed no indication or evidence to establish that the applicant's status was adjusted to that of a lawful permanent resident in the United States. The applicant has thus failed to establish that she meets the requirement set forth in section 321(5) of the former Act. She therefore does not qualify for citizenship under section 321 of the former Act.

It is noted that the applicant also failed to demonstrate that she derived citizenship through her parents under sections 320 and 322 of the former Act.

Section 322 of the former Act stated in pertinent part:

(a) Application of citizen parents; requirements

A parent who is a citizen of the United States may apply to the Attorney General [now the Secretary, Homeland Security, "Secretary"] for a certificate of citizenship on behalf of a child born outside the United States. The Attorney General [Secretary] shall issue such a certificate of citizenship upon proof to the satisfaction of the Attorney General [Secretary] that the following conditions have been fulfilled:

- 1) At least one parent is a citizen of the United States, whether by birth or naturalization.
- 2) The child is physically present in the United States pursuant to a lawful admission.
- 3) The child is under the age of 18 years and in the legal custody of the citizen parent.

....

b) Attainment of citizenship status; receipt of certificate

Upon approval of the application . . . [and] upon taking and subscribing before an officer of the Service [CIS] within the United States to the oath of allegiance required by this chapter of an applicant for naturalization, the child shall become a citizen of the United States and shall be furnished by the Attorney General [Secretary] with a certificate of citizenship.

In the present matter, the applicant's lawful admission status prior to her eighteenth birthday has not been established. The applicant also failed to meet the oath requirements set forth in section 322(b) of the former Act.

Section 320 of the former Act 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.

Neither of the applicant's parents were U.S. citizens when she was born, and the applicant failed to establish that prior to her eighteenth birthday she resided in the U.S. pursuant to a lawful admission for permanent residence. The applicant therefore did not derive U.S. citizenship under section 320 of the former Act.

The regulation provides at 8 C.F.R. § 341.2(c), that the burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. The applicant has failed to meet her burden in the present matter. The appeal will therefore be dismissed and the application denied.²

ORDER: The appeal is dismissed. The application is denied.

² It is noted that the present decision is without prejudice to the applicant's filing a Form N-400, Application for Naturalization pursuant to section 316 of the Act, 8 U.S.C. § 1427, after adjustment of her status to that of a lawful permanent resident either through a marriage-based petition (section 245 of the Act, 8 U.S.C. § 1255), or based upon her entry into the United States prior to January 1, 1972 (section 249 of the Act, 8 U.S.C. § 1259) .