



U.S. Citizenship
and Immigration
Services

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ER

FILE:

Office: CALIFORNIA SERVICE CENTER

Date: JUN 07 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 of the 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 7, 1988 in the Philippines. The applicant was adopted while under the age of 16, on May 20, 2004, by [REDACTED] and [REDACTED]. The applicant's adoptive parents, both U.S. citizens, were divorced on October 14, 2003. The applicant's adoptive mother obtained custody of the applicant upon the divorce. The applicant's adoptive father is deceased. The applicant was admitted to the United States as a visitor on or about April 12, 1998. The applicant resides with her adoptive mother in Texas. The applicant seeks a certificate of citizenship pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431, based on the claim that she acquired U.S. citizenship through her adoptive mother.

The director concluded that the applicant was ineligible for citizenship under section 322 of the Act, 8 U.S.C. § 1433. The director did not discuss eligibility under section 320 of the act, 8 U.S.C. § 1431, except to mistakenly mention that the applicant was over 18 when section 320 took effect.

On appeal, the applicant asserts, through counsel, that she is eligible for citizenship under section 320 of the Act, 8 U.S.C. § 1431, because she, while under 18 years of age, resided in the legal and physical custody of her U.S. citizen adoptive parent pursuant to a lawful admission to the United States.

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 12 years old on February 27, 2001, she 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 claims that she was lawfully admitted to the United States as a Canadian visitor on or about April 12, 1998. The applicant does not claim, nor does the record reflect, that she was ever admitted as a lawful permanent resident before turning 18 years of age.¹

¹ A Form I-130, Petition for Alien Relative, filed by the applicant's mother on the applicant's behalf was approved on February 26, 2007. The record before the AAO does not contain any evidence of a lawful admission for permanent

The AAO concludes that the applicant is ineligible for a certificate of citizenship under section 320 of the Act, 8 U.S.C. § 1431, because she was not lawfully admitted as a permanent resident prior to her 18th birthday. Section 322 of the Act, 8 U.S.C. § 1433, is inapplicable because the applicant has been residing in the United States since her arrival in April 1988.

The AAO notes that, as is well established, “[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). The applicant in the present case is not in the legal custody of her father. Accordingly, the AAO finds that she is not eligible for citizenship pursuant to the section 320 of the Act, 8 U.S.C. § 1431.

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 her burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.

residence or adjustment of status. The applicant was over 18 on February 26, 2007. Any subsequent adjustment of status or admission as a lawful permanent resident would necessarily be while over the age of 18.