



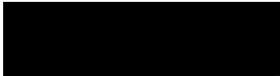
U.S. Citizenship  
and Immigration  
Services

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OFFICE: CHICAGO, IL

DATE: JUN 19 2007

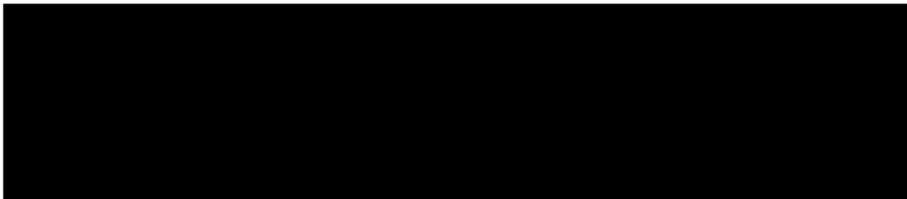
IN RE:

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:



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 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 in Iraq on July 1, 1969. He was admitted into the United States as a U.S. lawful permanent resident on June 17, 1975. The applicant's mother was born in Iraq, and she became a naturalized U.S. citizen on July 27, 1978, when the applicant was nine years old. The record contains no evidence regarding the applicant's father's citizenship status. The record reflects that the applicant's parents married on August 18, 1968. The applicant's parents began living separately around June 1985, and they obtained a judgment of dissolution of their marriage on November 18, 1996, when the applicant was twenty-seven years old. 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 concluded that the applicant was over the age of eighteen when amended provisions of section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431 went into effect on February 27, 2001. The applicant therefore did not derive citizenship under section 320 of the Act. The district director determined further that the applicant did not qualify for derivative citizenship under section 321 of the former Immigration and Nationality Act (the former Act), 8 U.S.C. § 1432, because he failed to establish that both of his parents became naturalized U.S. citizens, or that his mother became legally separated prior to his eighteenth birthday. The applicant's Form N-600, Application for Certificate of Citizenship (Form N-600 Application) was denied accordingly.

On appeal the applicant, through counsel, does not dispute that he does not qualify for citizenship under section 320 of the Act, as amended. The applicant asserts however, that evidence contained in the record reflects that an Illinois state court recognized that his parents lived separately from one another after about June 1985, and the applicant asserts, through counsel, that the judicial recognition of the parents' physical separation constitutes a legal separation for section 321 of the former Act purposes.

Section 320 of the former Act 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, he is not eligible for consideration under section 320 of the Act.<sup>1</sup>

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<sup>1</sup> 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.

It is noted that 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) 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 evidence in the record does not establish that the applicant's father became a naturalized U.S. citizen, or that one of the applicant's parents is deceased. The conditions contained in section 321(a)(1) and (2) of the former Act have therefore not been satisfied.

The record contains a U.S. Certificate of Naturalization establishing that the applicant's mother became a naturalized U.S. citizen on July 27, 1978, when the applicant was nine years old. A Circuit Court of Cook County, Illinois, County Department-Domestic Relations Division, *Judgment of Dissolution of Marriage* (Dissolution Judgment) contained in the record establishes that the applicant's mother obtained a divorce from the applicant's father on November 13, 1996, when the applicant was twenty-seven years old. Within the Dissolution Judgment, the Circuit Court states that the applicant's parents lived separately since about June 1985. In addition, references in the Dissolution Judgment to child support arrearage payments that may have been owed to the applicant's mother, as well as the applicant's school registration information contained in the record reflect that the applicant's parents had separate residences, and that the applicant resided in his mother's physical custody after 1985.

For immigration purposes, "[l]egal separation of the parents . . . means either a limited or absolute divorce obtained through judicial proceedings." *Matter of H*, 3 I&N Dec. 742 (1949) (Quotations omitted).

Referring to the U.S. Ninth Circuit Court of Appeals case, *Minasyan v. Gonzales*, 401 F.3d 1069, (9<sup>th</sup> Cir. 2005), the applicant asserts through counsel, that the term "legal separation" is not limited to orders expressly so titled, and that the term, "legal separation" is inclusive of any separation subsequent to a marriage, that is recognized by law. The applicant asserts that an Illinois State Court recognized the separation of his parents as of June 1985, in his parents' *Judgment of Dissolution of Marriage*. The applicant asserts further that his parents' *Marital Settlement Agreement* also recognizes the separation between his parents as of June 1985. In addition, the

applicant indicates that a child support order entered on or about 1980 is further evidence of court recognition of the applicant's parent's 1985 separation. The applicant states, through counsel, that the Illinois State court's recognition, within its court order, of his parents' June 1985 physical separation demonstrates that his parents' separation was recognized by law. The applicant concludes that under the terms of *Minasyan v. Gonzales*, his parents' June 1985 separation was thus a legal separation for immigration purposes.

The AAO is unconvinced by the applicant's assertions. It is noted that the U.S. Ninth Circuit Court of Appeals found in *Minasyan* that a divorce order issued by a California Superior Court in October 2001 recognized the separation of the parties as of October 1993. See *Minasyan v. Gonzales, supra* at 1073. The Ninth Circuit Court of Appeals stated that it must, "look to the law of California—the state with jurisdiction over Minasyan's parents' marriage—when deciding whether a legal separation occurred." *Id.* at 1077. The Court then stated that three forms of legal separation exist under California law:

The California Family Code provides for both "legal separation" and "dissolution of marriage" . . . . In addition, California case law recognizes that spouses are separated for legal purposes beginning on a court defined "date of separation." Such a separation is a separation by virtue of the law . . . . That form of legal separation occurs under California law when the spouses "have come to a parting of the ways with no present intention of resuming marital relations."

. . . .

[U]ltimately we conclude that in California a separation by virtue of law constitutes a legal separation for purposes of the INA [Immigration and Nationality Act].

*Id.* at 1078 (Citations omitted.) The Ninth Circuit Court of Appeals found further that:

In this case, the California Superior Court entered a formal order - the judgment of dissolution of marriage - that recognized that Minasyan's parents separated in October 1993 . . . . Thus, although the dissolution was not final until October 2001, the order establishes that, for purposes of state law, the separation was effective well before Minasyan's mother's naturalization in 1994. It also makes clear that Minasyan's mother had sole custody over her son from that date on. Because the order establishes the date of the legal separation for purposes of California law, we conclude that it is sufficient to establish the date for purposes of Minasyan's derivative citizenship under § 321(a).

*Id.* at 1079 (Citations omitted.)

The AAO notes that the forms of legal separation provided for under State of Illinois law are: a judgment of dissolution of marriage; a judgment of legal separation; or a judgment of declaration of invalidity of marriage. See 750 Illinois Compiled Statutes Annotated Chapter 750, Families Act 5, Illinois Marriage and Dissolution of Marriage Act Part IV (750 ILCS 5/401-411.) Illinois statutes do not provide for a form of legal separation based on a court-defined date of separation. Moreover, the record contains no legal evidence to indicate or establish that case law exists which allows for a court-defined date of separation in the state of Illinois. The AAO therefore finds that the applicant failed to establish that the separation between the applicant's parents beginning in June 1985, constitutes a legal separation under Illinois law. Rather, the AAO finds that the applicant's parents were not legally separated until November 13, 1996, the date they obtained a court ordered judgment of dissolution. Because the applicant was over the age of eighteen on November 13, 1986, he does not meet the requirements set forth in section 321(a)(3) of the former Act.

The regulations at 8 C.F.R. § 341.2(c) provide that the burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. Based upon a thorough review of the



evidence in the record, the AAO finds that the applicant has failed to establish that he qualifies for citizenship under section 321(a)(3) of the former Act. The appeal will therefore be dismissed and the application will be denied.

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