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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:  Office: CHICAGO, IL

Date:

MAY 03 2007

IN RE: Applicant: 

APPLICATION: Application for Certificate of Citizenship pursuant to Section 320 of the Immigration and Nationality Act, 8 U.S.C. § 1431 and 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.

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 sustained and the application approved.

The record reflects that the applicant was born in Germany on June 10, 1946. The applicant's mother, [REDACTED] became a naturalized U.S. citizen on January 30, 1962, when the applicant was fifteen years old. The record contains no information about the applicant's father. The applicant presently seeks a certificate of citizenship pursuant to section 321 of the former Immigration and Nationality Act (former Act), 8 U.S.C. § 1432.

The district director determined that the applicant was ineligible for citizenship under section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431, because she was over the age of eighteen on February 27, 2001, when the provision took effect. The district director determined further that the applicant was ineligible for citizenship under section 321 of the former Act, because she had provided insufficient evidence to enable a determination regarding her legitimacy or her father's death or legal custody over the applicant. The application was denied accordingly.

The applicant indicates on appeal that the record contains sufficient evidence to establish her U.S. citizenship.

Section 320 of the former Act was amended by the Child Citizenship Act of 2000 (CCA), and took effect on February 27, 2001.¹ The provisions of the CCA are not retroactive and the amended provisions of section 320 of the Act apply 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.

Section 321 of the former Act was repealed by the CCA. However, 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, states, 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 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.

- (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 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. Under the preponderance of evidence standard, it is generally sufficient that the proof establish that something is probably true. *See Matter of E-M-*, 20 I&N Dec. 77 (Comm. 1989). The AAO finds that the applicant has established by a preponderance of the evidence that she meets the requirements for U.S. citizenship under section 321 of the former Act.

The record contains a copy of the applicant's birth certificate, used for U.S. resettlement purposes, reflecting that she was born in Germany on April 20, 1951, to [REDACTED]. The record additionally contains a Certificate of Naturalization reflecting that the applicant's mother became a naturalized U.S. citizen on January 30, 1962, when the applicant was fifteen years old. The applicant therefore established that her mother became a naturalized U.S. citizen prior to the applicant's eighteenth birthday.

The applicant also established by a preponderance of the evidence that she was born out of wedlock, and that paternity was not established by legitimation, as set forth in section 321(a)(3) of the former Act. The applicant's birth certificate contains no paternal information for the applicant. The applicant's *Application for Immigration Visa and Alien Registration* form contained in the record also reflects that the applicant's father was unknown. In addition, a U.S. Immigration Questionnaire signed by the applicant's mother on July 2, 1949, reflects that the applicant's mother was single, and that she was never married, separated, divorced or widowed. Moreover, the record contains an August 8, 1950 statement made by the applicant's mother before a U.S. Resettlement Officer, declaring that the applicant was born as an illegitimate child. The applicant has further established that her mother had legal custody over the applicant at the time of her naturalization as a U.S. citizen, as required by section 321(a)(3) of the former Act. Legal custody vests "[b]y virtue of either a natural right or a court decree." *See Matter of Harris*, 15 I&N Dec. 39 (BIA 1970). In the present matter the applicant established that her mother had legal custody by virtue of her natural right over her child.

The applicant additionally established that she meets the lawful admission and permanent residence requirements set forth in section 321(a)(5) of the former Act. The applicant's *Application for Immigration Visa and Alien Registration* form reflects that the applicant was admitted into the United States as a displaced person immigrant on April 20, 1951, when she was four years old. The record contains no indication that the applicant departed the United States after her admission into the country in 1951. To the contrary, the record contains evidence reflecting that the applicant was married in the United States in 1967, and subsequent

immigration applications indicate that the applicant has continuously resided in the United States since her admission into the United States in 1951.

The applicant has thus established by a preponderance of the evidence that she meets the requirements set forth in section 321(a)(3), (4), and (5) of the former Act. Because the applicant has met her burden of proof in the present matter, the appeal will be sustained and the application approved.

ORDER: The appeal is sustained. The application is approved.