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U.S. Citizenship
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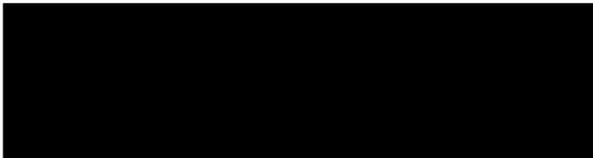
Date: MAY 21 2007

IN RE:



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.

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, San Francisco, California, 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 December 3, 1981 in Tehran, Iran. The applicant's parents were also born in Iran. They were married to each other when the applicant was born, but they divorced in 1993. The applicant's father became a naturalized U.S. citizen on March 16, 2001, when the applicant was nineteen years old. The applicant's mother's immigration status is unknown, but it is noted that the Form N-600, Application for Certificate of Citizenship indicates that she is now remarried to the applicant's U.S. citizen father. The applicant was admitted into the United States as a lawful permanent resident on July 17, 1997, when she was fifteen years old, based on a petition for immediate relative filed by her father's U.S. citizen wife at that time. The applicant seeks a certificate of citizenship pursuant to § 320 of the amended Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The district director concluded that the applicant was statutorily ineligible for a certificate of citizenship under § 320 of the Act, 8 U.S.C. § 1431, because the evidence does not establish that she was under the age of eighteen when her father became a naturalized U.S. citizen, as required by § 320 of the Act. The district director also noted that the applicant did not qualify for benefits under the Child Citizenship Act of 2000 (CCA), because she was already over eighteen years old when the CCA took effect. The application was denied accordingly.

On appeal, counsel asserts that the district director erroneously imposed an unlawfully high standard of proof on the applicant in requiring her to establish her eligibility for a certificate of citizenship by "clear and convincing" evidence, rather than by a preponderance of the evidence. Counsel contends that the vast weight of the evidence shows that the applicant was under eighteen years of age when her father naturalized; hence, she is eligible for a certificate of citizenship pursuant to § 320 of the Act. She asserts that the applicant's new birth certificate is proof that the applicant was 17 years old when her father became a U.S. citizen and when the CCA took effect.

Section 320 of the Act, as amended, permits a child born outside of the United States to automatically become a citizen of the United States upon fulfillment of the following conditions:

- (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.

Precedent decisions have clearly stated that the provisions of the CCA are not retroactive and that the amended provisions 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).

Applicants who are not eligible for benefits under the CCA may still seek a certificate of citizenship under former section 321 of the Act, which was repealed by the CCA. All persons who would have acquired U.S.

citizenship automatically under its provisions prior to February 27, 2001 may apply for a certificate of citizenship at any time. *See Matter of Rodriguez-Tejedor, supra.*

Former section 321 of the 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.

One of the requirements common to both § 320 of the Act as amended and former § 321 of the Act is that in order to qualify for a certificate of citizenship, an applicant must be under 18 years of age when his or her U.S. citizen parent(s) is naturalized.

In the present case, the applicant's eligibility for a certificate of citizenship turns on her date of birth. The AAO notes that the record contains three different sets of facts regarding the applicant's birth, and that the evidence does not reconcile the resulting inconsistencies. The applicant's birth date is, therefore, not established by a preponderance of the evidence.

All the documents initially submitted to Citizenship and Immigration Services (CIS), formerly the Immigration and Naturalization Service, in connection with the petition on the applicant's behalf and her father's naturalization application, reflect a birth date of December 3, 1981, in Iran, to Iranian parents. On September 17, 2002, the applicant pled guilty to forgery and second degree grand theft of property, for which she was sentenced to two years in prison. While she was in prison, the applicant was placed into immigration proceedings. Interviewed on January 22, 2003, the applicant stated that she was actually born to an American couple at a U.S. Air Force base hospital, and that the people who petitioned for her (her Iranian father and Russian-born, U.S. citizen stepmother) were her adoptive parents. In January 2004, the applicant's previous attorney (and current husband) submitted to the immigration court a motion to review the respondent's derivative naturalization status, based on the applicant's recently obtained, amended Iranian birth certificate showing a birth date of December 13, 1983.

In support of the applicant's assertion that she was born in 1983 rather than 1981, counsel submits: the amended birth certificate, dated December 25, 2002; an Iranian passport issued in Washington, D.C. on September 15, 2003; a California driver's license issued on December 14, 2004; employment authorization cards issued on December 6, 2004 and October 25, 2006; transcripts of the applicant's removal proceedings in immigration court; a statement by the applicant dated March 26, 2004; brief statements by the applicant's mother, sister, uncle, and cousin dated March 24, 2004; and other documentation. In her March 26, 2004 statement and during her removal hearing in immigration court, the applicant explained that on September 18, 2002 when she informed her mother that she was in prison, her mother confessed for the first time to the applicant that she was not born on December 3, 1981, but rather on December 13, 1983. The applicant indicated that her mother told her that she had a sister born on December 3, 1981 who died in 1982, and that when the applicant was born in 1983, her mother simply used her deceased sister's birth certificate for her. According to the applicant, her mother said she never obtained a valid birth certificate for the applicant, because a war prevented her from doing so.

While the AAO acknowledges the statements of the applicant's mother's and her other relatives, they are not affidavits. Further, they offer no corroboration of the circumstances that the applicant claims led to the misstating of her date of birth in the birth certificate she originally submitted to CIS. None of the statements refer to the death of the applicant's sister or the use of that sister's birth certificate to document the applicant's birth in 1983. The AAO notes in particular the absence of any reference to these events in the statement provided by the applicant's mother who, the applicant claims, was the source of this information. The statements of the applicant's sister and cousin also fail to indicate how the writers would have direct personal knowledge of the applicant's date of birth. Further, the fact that the applicant's mother was able to obtain an amended birth certificate is not probative of the truth in this matter, since the documentation, if any, upon which the amendment was based has not been submitted for the record. All the recently obtained documents, including the passport, driver's license, and employment authorization cards are based on the amended birth certificate; hence, they also carry little weight. The record also does not include a death certificate for the applicant's claimed elder sister.

The AAO notes that it is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). If CIS fails to believe that a fact stated in the application is true, CIS may reject that fact. See section 204(b) of the Act, 8 U.S.C. § 1154(b); see also *Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). As the applicant has failed to resolve the inconsistencies regarding her date of birth by presenting competent objective evidence, the AAO is unable to accept her newly claimed birth date of December 13, 1983 as true.

Based on the record before it, the AAO concludes that the unresolved inconsistencies in the applicant's birth records undermine her ability to establish eligibility for a certificate of citizenship under the provisions of section 320 of the Act, as amended, or the repealed provisions of former section 321. The evidence she has submitted is insufficient to prove that she was still under 18 years of age on February 27, 2001, the CCA's date of enactment or on March 16, 2001, the date on which her father became a U.S. citizen. Accordingly, the appeal will be dismissed.

The regulation at 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 has not met her burden. Accordingly, the appeal will be dismissed.



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ORDER: The appeal is dismissed.