



U.S. Citizenship
and Immigration
Services

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FILE:

Office: MIAMI, FL

Date: MAY 23 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:

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, Miami, Florida. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant was born in Vietnam on May 27, 1998. At birth, the applicant's name was [REDACTED]. The applicant was adopted in Vietnam on March 11, 1999. A final adoption judgment was also issued in Florida on November 7, 2000. Pursuant to his Florida adoption judgment, the applicant's name was changed to [REDACTED]. On July 4, 1999, the applicant was admitted into the United States as a lawful permanent resident. The applicant presently seeks a certificate of U.S. citizenship based on his relationship to a U.S. citizen parent.

The district director determined that the applicant's mother had failed to submit evidence of the applicant's eligibility for U.S. citizenship. The application was denied accordingly.

On appeal the applicant asserts, through his mother, that he is submitting proof of his mother's 1977, naturalization as a U.S. citizen.

The AAO notes that the district director analyzed the applicant's eligibility for U.S. citizenship pursuant to provisions contained in section 321 of the former Immigration and Nationality Act (the former Act), 8 U.S.C. § 1432. The Child Citizenship Act of 2000 (CCA), effective February 27, 2001, repealed section 321 of the former Act.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 applicant failed to establish that prior to February 27, 2001, both of his parents were naturalized U.S. citizens, or that he was the child of a surviving, or legally separated, U.S. citizen parent. The applicant thus does not qualify for citizenship under section 321 of the former Act.

The AAO notes that it conducts the final administrative review and enters the ultimate decision for U.S. Citizenship and Immigration Services (CIS) on all immigration matters that fall within its jurisdiction. The AAO reviews each case de novo as to questions of law, fact, discretion, or any other issue that may arise in an appeal that falls under its jurisdiction. Because the AAO engages in de novo review, the AAO may deny an application or petition that fails to comply with the technical requirements of the law, without remand, even if the district or service center director does not identify all of the grounds for denial in the initial decision. See *Helvering v. Gowran*, 302 U.S. 238, 245-46 (1937); see also, *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), aff'd. 345 F.3d 683 (9th Cir. 2003.) Likewise, the AAO may also approve an application or petition without remand, if the application or petition complies with the technical requirements of the law.

Upon review of the evidence contained in the record, the AAO finds that the applicant qualifies for U.S. citizenship pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431, as amended by the CCA, effective February 27, 2001.

Legal decisions establish that the provisions of the CCA are not retroactive and that the amended provisions contained in 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 under the age of eighteen on February 27, 2001, he is eligible for consideration under section 320 of the Act.

Section 320 of the Act provides 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 101(b)(1).

Section 101(b)(1)(E) of the Act, 8 U.S.C. § 1101(b)(1)(E) states in pertinent part that the term "child" means an unmarried person under twenty-one years of age who is:

[A] child adopted while under the age of sixteen years if the child has been in the legal custody of, and has resided with, the adopting parent or parents for at least two years

The AAO notes that the two-year residence requirement set forth in section 101(b)(1)(E) of the Act may be

satisfied either before or after an adoption. *See Matter of Repuyan*, 19 I&N Dec. 119, 120 (BIA 1984). The AAO notes further that legal custody vests "by virtue of either a natural right or a court decree." *See Matter of Harris*, 15 I&N Dec. 39 (BIA 1970).

The AAO finds that the evidence contained in the record establishes that the applicant was adopted prior to his sixteenth birthday, and that he has been in the legal custody of his adopting parents for at least two years, as set forth in section 101(b)(1)(E) of the Act. The record contains the applicant's original birth certificate and a Socialist Republic of Vietnam Decision on Adoption, reflecting that the applicant was legally adopted by [REDACTED] and her husband, [REDACTED] on March 11, 1999. The record also contains a November 7, 2000, Circuit Court of the Eleventh Judicial Circuit, Miami-Dade County, Florida, Family Division, Final Judgment of Adoption declaring that the applicant is the legal child of [REDACTED] and [REDACTED]. In addition to the above evidence the record contains an approved Form I-600, Petition to Classify Orphan as an Immediate Relative (I-600 Petition) for the applicant, and an approved immigrant visa petition reflecting that the applicant was admitted into the United States as an IR3 (orphan adopted abroad by US citizen) lawful permanent resident on July 4, 1999. Accordingly, the applicant satisfies the requirements contained in section 320(b) of the Act.

The AAO finds that the applicant has additionally established that he meets the requirements set forth in section 320(a) of the Act. The applicant has established that he is presently under the age of eighteen, and that he has resided in the United States since July 4, 1999, in the legal and physical custody of a U.S. citizen parent. In addition, the record contains a copy of the applicant's mother's U.S. passport issued on January 21, 1997, prior to the applicant's adoption. The record additionally contains a copy of [REDACTED] Certificate of Naturalization reflecting that she became a naturalized U.S. citizen on August 8, 1977.

The regulation at 8 C.F.R. § 341.2(c) provides that the burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. In the present matter, the applicant has established by a preponderance of the evidence that he satisfies the requirements for citizenship as set forth in section 320 of the Act. The appeal will therefore be sustained and the application will be approved.

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