

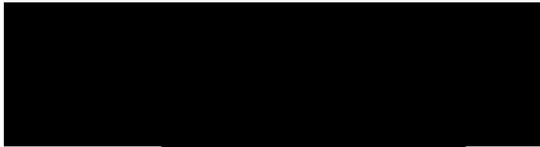
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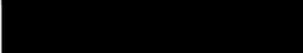
U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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FILE:



Office: NEW YORK

Date:

DEC 22 2008

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, New York, New York, and came before the Administrative Appeals Office (AAO) on appeal. On July 7, 2005, the AAO sustained the appeal. The applicant filed a second Form N-600, Application for Certificate of Citizenship on March 9, 2007. The District Director filed the instant Motion to Reconsider with the AAO. Upon reconsideration, the AAO's July 7, 2005 decision will be withdrawn, and the appeal will be dismissed.

The record reflects that the applicant was born on July 10, 1991 in Russia. The applicant's parents, as indicated on her birth certificate, are [REDACTED] and [REDACTED]. The applicant was born out of wedlock. The applicant's father became a U.S. citizen on November 23, 1996, when the applicant was five years old. The applicant was admitted to the United States as a lawful permanent resident on September 30, 2001, when she was 10 years old. 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 father.

The district director concluded, in relevant part, that the applicant did not acquire U.S. citizenship under section 320 of the Act because her father's paternity had not been established by legitimation. On appeal, the AAO determined that the applicant was legitimated pursuant to New York Law. The district director seeks reconsideration maintaining that the AAO's finding in this regard was erroneous.

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 under 18 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.

Section 101(c) of the Act, 8 U.S.C. § 1101(c) states, in pertinent part, that for Title III naturalization and citizenship purposes:

The term “child” means an unmarried person under twenty-one years of age and includes a child legitimated under the law of the child’s residence or domicile, or under the law of the father’s residence or domicile, whether in the United States or elsewhere . . . if such legitimation . . . takes place before the child reaches the age of 16 years . . . and the child is in the legal custody of the legitimating . . . parent or parents at the time of such legitimation

The record reflects that the applicant was admitted to the United States as a lawful permanent resident in 2001, and that the applicant’s father naturalized in 1996. The applicant is under the age of 18. The question remains whether the applicant falls within the definition of “child,” specifically, whether she was legitimated under the laws of her (or her father’s) residence or domicile.

The AAO finds that the applicant was not legitimated under New York law. *See Matter of Patrick*, 19 I&N Dec. 726 (BIA 1988) (holding that the subsequent marriage of biological parents is required for legitimation); *see also Matter of Espinoza*, 17 I&N Dec. 522 (BIA 1980) and New York Domestic Relations Law, Section 24.¹ The AAO further finds that the applicant has not established that her father’s Confirmation of Paternity (issued in Russia on August 17, 1991) amounts to legitimation under Russian law. The applicant therefore does not meet the definition of “child” found in section 101(c) of the Act, 8 U.S.C. § 1101(c), and thus did not automatically acquire U.S. citizenship pursuant to section 320 of the Act, 8 U.S.C. § 1431.

Pursuant to 8 C.F.R. § 341.2(c), the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. In order to meet this burden, the applicant must submit relevant, probative and credible evidence to establish that the claim is “probably true” or “more likely than not.” *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). The applicant has not met her burden and the appeal will be dismissed.

ORDER: The July 7, 2005 decision of the AAO is withdrawn. The appeal is dismissed. The application for a certificate of citizenship is denied.

¹ The AAO previously erred in finding that the applicant was legitimated pursuant to section 4-1.2(a)(2)(C) of the New York Estates, Powers and Trust Law. The AAO is bound by the Board of Immigration Appeals’ precedent decisions cited above regarding New York legitimation. *See* 8 C.F.R. § 1003.1(g). Moreover, the New York Estates, Powers and Trusts Law relates solely to a child’s rights in inheritance matters, and not to paternity or legitimation for immigration purposes.