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U.S. Citizenship  
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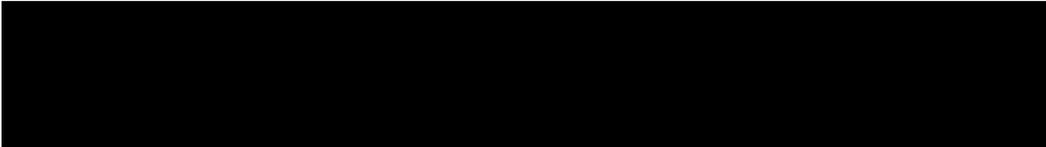


FILE: [Redacted] Office: BOSTON, MA Date: **FEB 20 2008**

IN RE: Applicant: [Redacted]

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

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 Field Office Director, Boston, Massachusetts and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born in Jamaica on April 26, 1986 to [REDACTED] who became a naturalized U.S. citizen on November 2, 2001. The applicant was admitted to the United States as a lawful permanent resident on April 16, 1992, based on an approved Form I-130, Petition for Alien Relative, filed by [REDACTED], who is identified on the Form I-130 as his mother. The applicant seeks a certificate of citizenship under section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431, based on [REDACTED] naturalization.

The field office director concluded that the applicant did not hold a viable lawful permanent resident status, a fundamental prerequisite for naturalization. She denied the application accordingly. *Decision of the Field Office Director*, dated May 31, 2007.

On appeal, states that the applicant wishes to submit DNA evidence to establish [REDACTED] as his mother and an amended birth certificate. *Form I-290B, Notice of Appeal or Motion*, dated July 2, 2007. In support of the Form I-290B, the record offers a DNA report that establishes [REDACTED] as the applicant's biological mother and an amended Jamaican birth certificate identifying [REDACTED] as the applicant's mother.

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 eighteenth birthdays as of February 27, 2001. Because the applicant was 14 years old on February 27, 2001, he meets the age requirement for benefits under the CCA.

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.

Based on the record before it, the AAO finds the applicant to have established that [REDACTED] is his natural mother and that the individuals listed as his parents on his original birth certificate, [REDACTED] and [REDACTED] are his grandparents. As [REDACTED] became a naturalized citizen in 2001 when the applicant was 15 years of age, he has satisfied the requirement of section 320(a)(1) of the Act. However, the DNA evidence that has allowed the applicant to establish [REDACTED] as his mother prevents him from proving that he was lawfully admitted to the United States as a permanent resident in 1992, a requirement set forth in section 320(a)(3) of the Act.

The record includes the Form I-130, Petition for Alien Relative, filed on the applicant's behalf by [REDACTED] and the Optional Form 155A, Immigrant Visa and Alien Registration, used by the applicant to enter the United States as a lawful permanent resident in 1992. On both forms, [REDACTED] is identified as the

applicant's mother. As the record demonstrates that this relationship did not exist and, therefore, that the applicant was ineligible to benefit from the Form I-130 filed on his behalf, the visa issued to him by the Department of State consular officer in Kingston, Jamaica in 1992 was not valid. Where a consular officer's knowledge of the true facts would have required a finding that the applicant was ineligible to receive a visa, concealment of those facts from the consul results in the procurement of a visa that is not valid. *See Matter of F—M—*, 7 I&N Dec. 420 (BIA 1957); *Matter of Vivas*, 16 I&N Dec. 68 (BIA 1977); *Matter of Guang Li Fu*, 12 I&N Dec. 985 (BIA 2006). The fact that the applicant was unaware that he was not eligible for an immigrant visa is not relevant to this determination. Neither fraud nor willfulness are required on the part of a visa applicant. *Matter of F—M—*; *Matter of Vivas*. In that the visa that the applicant used to enter the United States in 1992 was invalid, he has not established that he is residing in the United States pursuant to a lawful admission for permanent residence, as required by section 320(a)(3) of the Act. Accordingly, he has not demonstrated eligibility for a certificate of citizenship and the appeal will be dismissed.

The regulation at 8 C.F.R. 341.2(c) states 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 his burden. The appeal will therefore be dismissed.

**ORDER:** The appeal is dismissed.