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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

E₂

PUBLIC COPY

FILE:

OFFICE: BUFFALO, NY

DATE:

JAN 08 2008

IN RE:

APPLICANT:

APPLICATION: Application for Certificate of Citizenship under sections 320 and 322 of the former Immigration and Nationality Act; 8 U.S.C. §§ 1431 and 1433.

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, Buffalo, New York 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 the Dominican Republic on November 15, 1975. The applicant's grandmother, [REDACTED], whom he claims as his adoptive mother, was also born in the Dominican Republic but acquired U.S. citizenship at her birth on September 10, 1926. The applicant's father is deceased and his birth mother remains a citizen of the Dominican Republic. The applicant was admitted into the United States as a lawful permanent resident on June 7, 1986, when he was ten years old. The applicant seeks a Certificate of Citizenship pursuant to former section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1431 and 1433.

In his denial, the district director noted that the record established that [REDACTED] had been granted guardianship of the applicant in 1993 by the Surrogate's Court in Kings County, New York. She determined, however, that this documentation did not establish that the applicant had been adopted by his grandmother prior to his 16th birthday, as required by the definition of child in section 101(c)(1) of the Act. The district director denied the application accordingly. *District Director's decision*, dated October 23, 2007.

On appeal the applicant submits documentation to establish his lawful adoption in the Dominican Republic in 1990, when he was 14 years of age. He provides a November 23, 2007 "notary certification" from [REDACTED] who states that his files contain an "authentic act of adoption, No. 08-90, given in the city of Bona0, Province of Monsenor Nouel, Dominican Republic, February 23, 1990."

Section 322 of the Act, under which the applicant must establish his claim to U.S. citizenship, was amended by the Child Citizenship Act of 2000 (CCA), effective as of February 27, 2001. As the CCA benefits only those persons who had not yet reached their eighteenth birthday as of its effective date, the applicant, who was 25 years old on February 27, 2001, is not eligible for CCA consideration. However, any person who would have acquired citizenship under the former provisions of section 322 prior to February 27, 2001 may apply for a certificate of citizenship at any time. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). Therefore, the issue before the AAO is whether the record establishes that the applicant acquired U.S. citizenship under the previous provisions of section 322 of the Act.

Section 322 of the former Act provided, in pertinent part, that:

(a) A parent who is a citizen of the United States may apply to the Attorney General [now the Secretary, Homeland Security, "Secretary"] for a certificate of citizenship on behalf of a child born outside the United States. The Attorney General [Secretary] shall issue such a certificate of citizenship upon proof to the satisfaction of the Attorney General [Secretary] that the following conditions have been fulfilled:

- (1) At least one parent is a citizen of the United States, whether by birth or naturalization.
- (2) The child is physically present in the United States pursuant to a lawful admission.
- (3) The child is under the age of 18 years and in the legal custody of the citizen parent.

....

(b) Upon approval of the application . . . [and] upon taking and subscribing before an officer of the Service within the United States to the oath of allegiance required by this chapter of an applicant for naturalization, the child shall become a citizen of the United States and shall be furnished by the Attorney General [Secretary] with a certificate of citizenship.

The AAO notes that, whether or not an applicant satisfies the requirements set forth in former section 322(a) of the Act, section 322(b) requires that an applicant also establish that his or her application for citizenship was approved by Citizenship and Immigration Service (CIS) prior to the applicant's eighteenth birthday, and that the applicant had taken an oath of allegiance prior to turning 18 years of age. The applicant in the instant case has not met the requirements set forth in former section 322(b) of the Act as CIS did not approve his certificate of citizenship application before he turned 18 years of age on November 15, 1993, and he did not take an oath of allegiance prior to that date. Accordingly, the appeal will be dismissed.

Moreover, the AAO does not find the evidence submitted by the applicant on appeal to establish that he was legally adopted by his grandmother in 1990 under the laws of the Dominican Republic. The applicant has submitted a certification from a Dominican notary who states that, in his records, he has an authentic Act of Adoption, No. 08-90, relating to the applicant and that this act has been registered with the City of Bonao. No copy of the Act of Adoption is provided. In the absence of that document, the notary's statement regarding the circumstances under which [REDACTED] assumed responsibility for the applicant and her stated desire to formally adopt the applicant does not constitute proof of a lawful adoption. Simply going on record without supporting documentation will not meet the applicant's burden of proof in this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). For this reason as well, 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 his or her claimed citizenship by a preponderance of the evidence. The applicant has not met his burden in the present matter.

ORDER: The appeal is dismissed.