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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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[Redacted]

JUN 13 2008

FILE: [Redacted] Office: ANCHORAGE, AK Date:

IN RE: Applicant: [Redacted]

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:

[Redacted]

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, Anchorage, Alaska, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected. The application is denied.

The record reflects that the applicant was born out of wedlock in Korea. The applicant claims that he was born on January 12, 1963. The applicant's mother, [REDACTED], became a U.S. citizen upon her naturalization on February 9, 1979. The applicant was admitted to the United States as a lawful permanent resident on April 17, 1974. The applicant seeks a certificate of citizenship pursuant to section 321 of the former Immigration and Naturalization Act (the former Act), 8 U.S.C. § 1432 (repealed),¹ claiming that he derived citizenship through his mother.

The district director found that the applicant had failed, in relevant part, to establish that he was under 18 years old when his mother naturalized. The application was denied accordingly.

The AAO notes that the applicant first filed a Form N-600, Application for Certificate of Citizenship in 1998, and that the application was denied. An appeal of the applicant's first Form N-600 was dismissed by the AAO on September 30, 1999. The instant Form N-600, the applicant's second, was filed in 2005. The AAO finds that it must be rejected because, pursuant to 8 C.F.R. § 341.6, "[a]fter an application for a Certificate of Citizenship has been denied and the appeal time has run, a second application submitted by the same individual shall be rejected and the applicant instructed to submit a motion for reopening or reconsideration"

At issue in this case is the applicant's date of birth. In addressing this issue previously, the AAO noted that the record included the applicant's original family registration that listed March 5, 1959 as his date of birth. The AAO further noted that documents in the record, dated in 1972 and 1973, including the Certificate of Orphanhood, Certificate of Appointment to the Guardian, an affidavit from the Executive Director of the Holt Adoption Program, and the applicant's immigrant visa application, all indicated that the applicant was born

¹ Section 321 of the former Act, 8 U.S.C. § 1432, 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.

on March 5, 1959. The AAO noted that the applicant had claimed that his date of birth was January 12, 1961. In an affidavit executed in 1998, the applicant's mother attested that the applicant's date of birth was January 12, 1961.² The AAO also considered the local Korean court order correcting the applicant's date of birth to January 12, 1963. The AAO nevertheless found that the applicant had not established, by a preponderance of the evidence, that his date of birth was January 12, 1963. In further support of this finding, the AAO noted the applicant's school records which established that he was enrolled in first grade in 1966, finding it unlikely that the applicant was in first grade at the age of three.

The applicant now submits the October 1999 order and oral decision of the immigration judge terminating his removal proceedings³, a driver's license issued by the Hawaii Department of Motor Vehicles, and a benefits statement issued by the Social Security Administration.⁴ The record also contains a second affidavit executed by the applicant's mother attesting that the applicant was born on January 12, 1963. The transcript of the applicant's removal proceedings are also in the record.

In accordance with section 341 of the Act, 8 U.S.C. § 1452,

A person who claims to have derived United States citizenship through the naturalization of a parent . . . may apply . . . for a certificate of citizenship. Upon proof to the satisfaction of the [Secretary of Homeland Security] that the applicant is a citizen, and that the applicant's alleged citizenship was derived as claimed, or acquired, as the case may be, . . . such individual shall be furnished . . . with a certificate of citizenship.

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. 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).

In *Matter of Tijerina-Villarreal*, 13 I&N Dec. 327, 331 (BIA 1969), the BIA held that:

[W]here a claim of derivative citizenship has reasonable support, it cannot be rejected arbitrarily. However, when good reasons appear for rejecting such a claim such as the interest of witnesses and important discrepancies, then the special inquiry officer need not accept the evidence proffered by the claimant. (Citations omitted.)

² The AAO correctly noted that the applicant was ineligible to derive U.S. citizenship if his birth date was January 12, 1961, because he would not have been under 18 years old when his mother naturalized.

³ The immigration judge's decision was affirmed without an opinion by the Board of Immigration Appeals (BIA).

⁴ The AAO notes that it is not bound by decisions of other branches of government in proceedings that did not involve a determination that the applicant derived U.S. citizenship. The immigration judge recognized in his decision that he was determining the question of whether the government had established by clear and convincing evidence that the applicant was an alien, noting that the government has a higher burden of proof. The AAO also notes that the immigration judge did not address the effect of the revocation of the applicant's adoption.

The AAO finds important discrepancies in the record with regard to the applicant's date of birth. The applicant's family registration, issued in 1968, reflects that the applicant was born on March 5, 1959. This is the date of birth reflected in the applicant's immigrant visa application. This is also the date listed by the applicant in his 1982 naturalization petition. The applicant's first Form N-600, Application for Certificate of Citizenship, lists his date of birth as January 12, 1961. The first Form N-600 is accompanied by an affidavit executed by the applicant's mother attesting to the applicant's January 12, 1961 birth date.⁵ Subsequent to the 1998 denial of the applicant's first Form N-600, a local court in Korea ordered the correction of the applicant's family registration to reflect a date of birth of January 12, 1963. The record does not include any documentation regarding the factual basis upon which the Korean court based its order. The applicant has not explained why his mother first stated, under oath, that his date of birth was in 1961 and, a year later, attested that it was in 1963. The applicant has also not explained why his school records indicate that he was in first grade in 1966, other than to acknowledge that it is not "usual" for a three-year-old to attend the first grade. The applicant therefore cannot establish, by a preponderance of the evidence, that he was under 18 when his mother naturalized.

The AAO further finds that the applicant also cannot establish that he was the child of his natural mother when she naturalized in 1979. The applicant was adopted by [REDACTED] and [REDACTED] on May 2, 1978. The adoption decree was vacated on March 12, 1999, in a decree ordering the "termination" of the [REDACTED]'s parental rights and the resumption of the applicant's status as the child of [REDACTED] (his natural mother). The language in the decree does not support a claim that it applies retroactively to annul the applicant's adoption. In any event, the decree would not retroactively restore the child's relationship to his natural mother for immigration purposes. The applicant was the adopted child of the [REDACTED]s when the last condition of section 321 of the former Act (his natural mother's naturalization) was fulfilled. The applicant therefore cannot establish that he derived citizenship under section 321 of the former Act.

The applicant has failed to meet his burden to prove that he met the requirements of section 321 of the former Act. The AAO notes "[t]here must be strict compliance with all the congressionally imposed prerequisites to the acquisition of citizenship." *Fedorenko v United States*, 449 U.S. 490, 506 (1981). "[I]t has been universally accepted that the burden is on the alien applicant to show his eligibility for citizenship in every respect. [The Supreme] Court has often stated that doubts 'should be resolved in favor of the United States and against the claimant.'" *Berenyi v. District Director*, 385 U.S. 630, 671 (1967). The applicant therefore cannot establish that he derived U.S. citizenship when his date of birth is, at best, uncertain. The applicant also cannot establish that he was not an adopted child at the time of his natural mother's naturalization. The applicant is not eligible for U.S. citizenship, and the appeal will be rejected. The application will be denied.

ORDER: The appeal is rejected. The application is denied.

⁵ The applicant's mother did not testify at the applicant's removal proceedings. Her inconsistent statements were not brought to the attention of the immigration judge.