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



U.S. Citizenship
and Immigration
Services

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PUBLIC COPY

[Redacted]

FILE:

[Redacted]

Office: NEW YORK, NY

Date: JUN 13 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:

[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 Form N-600, Application for Certificate of Citizenship (Form N-600) was denied by the District Director, New York, New York. The matter is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded to the district director for further action consistent with this decision, and for issuance of a new decision which, if adverse to the applicant, shall be certified to the AAO for review.

Documents contained in the record indicate that the applicant was born in Bangladesh on November 27, 1989. The applicant's mother was born in Bangladesh and she is not a U.S. citizen. The applicant's father was born in Bangladesh, and he became a naturalized U.S. citizen on August 16, 1996. The applicant's parents married in Bangladesh on September 10, 1985. The applicant was admitted into the U.S. as a lawful permanent resident on November 2, 2004. She presently 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 derived U.S. citizenship through her father.

The district director noted that the applicant was issued an immigrant visa, and was admitted into the United States as a lawful permanent resident under the name, [REDACTED]. On her Form N-600 the applicant asked that her name be changed to [REDACTED]. In support of her request, the applicant supplied a birth certificate issued on November 27, 1989, reflecting that her name is [REDACTED]. The district director determined that the applicant had failed to provide evidence to resolve the identity conflict presented by the applicant's different birth certificates and names. The district director determined further that the applicant had obtained her U.S. immigrant visa and lawful permanent resident status with fraudulent documents, and that she therefore failed to establish that she resided in the United States pursuant to a lawful admission for permanent residence, as required by section 320(a)(3) of the Act. The Form N-600 was denied accordingly.

On appeal the applicant indicates through counsel, that she did not try to deceive U.S. Citizenship and Immigration Services (CIS), and that her father mistakenly believed she could change her name on her certificate of citizenship. The applicant indicates that she is entitled to derivative U.S. citizenship, and she requests that a certificate of citizenship be issued to her under the name, [REDACTED].

Section 320 of the Act allows a child born outside of the U.S. to automatically become a citizen of the United States upon fulfillment of the following conditions:

- (a) (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* (emphasis added.)

Section 101(a)(20) of the Act, 8 U.S.C. § 1101(a)(20) defines the term "lawfully admitted for permanent residence" as, "[t]he status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed." "[L]awfully denotes compliance with substantive legal requirements, not mere procedural regularity." *Arellano-Garcia v. Gonzales*, 429 F.3d 1183, 1186 (8th Cir. 2005) (quotations and citations omitted.) The term "lawfully admitted

for permanent residence” does not apply to aliens who “obtained their permanent residence by fraud, or had otherwise not been entitled to it.” *Id.* at 1187.

The present record contains two Bangladeshi birth certificates for the applicant. A birth certificate submitted for U.S. immigrant visa and lawful permanent residence purposes contains a July 19, 2004 registration date and reflects that the applicant’s name is [REDACTED]. The applicant’s father’s name is listed as [REDACTED] and her mother’s name as [REDACTED]. A second birth certificate containing the applicant’s desired name for citizenship purposes, [REDACTED], reflects that the applicant’s birth was registered on the day of her birth, November 27, 1989. The applicant’s parents’ names are listed as [REDACTED] and [REDACTED]. The record contains a copy of the applicant’s Bangladeshi passport, issued on July 5, 2004, reflecting that the applicant’s name is [REDACTED]. In addition, the record reflects that the applicant’s father naturalized under the name, [REDACTED], and that he legally changed his name to [REDACTED] in California, on May 13, 1997, after the applicant’s birth.

On March 23, 2006, the district director requested evidence of a legal name change order for the applicant. No such evidence was provided. The record contains affidavits written by the applicant and her father. The affidavits state that neither the applicant nor her father intentionally misrepresented the applicant’s identity. The affidavits do not address the applicant’s name change and the existence of two birth certificates.

Based on the above discrepancies the district director concluded that the applicant had obtained her lawful permanent resident status with fraudulent documents. The district director determined that the applicant had therefore not been lawfully admitted into the United States for permanent residence, as required by section 320(a)(3) of the Act.

The AAO finds that the district director erred in finding that the applicant had not been lawfully admitted to the United States for permanent residence. There is nothing in the record to indicate that the applicant’s lawful permanent resident status has been rescinded. The district director is required to follow specific statutory and regulatory procedures in order to rescind the applicant’s lawful permanent resident status. The district director’s determination regarding the applicant’s lawful permanent resident status was therefore premature, and the Form N-600 denial was in error.

Section 246(a) of the Act, 8 U.S.C. § 1256(a), provides in pertinent part that:

If, at any time within five years after the status of a person has been otherwise adjusted under the provisions of section 245 or section 249 of this Act or any other provision of law to that of an alien lawfully admitted for permanent residence, it shall appear to the satisfaction of the Attorney General [Secretary, Department of Homeland Security] that the person was not in fact eligible for such adjustment of status, the Attorney General [Secretary] shall rescind the action taken granting an adjustment of status to such person and canceling removal in the case of such person if that occurred and the person shall thereupon be subject to all provisions of this Act to the same extent as if the adjustment of status had not been made. Nothing in this subsection shall require the Attorney General [Secretary] to rescind the alien's status prior to commencement of procedures to remove the alien under section 240, and an order of removal issued by an immigration judge shall be sufficient to rescind the alien’s status.

The regulation at 8 C.F.R. § 246.1 describes the procedure for rescinding lawful permanent resident status at the district level, by stating in pertinent part that:

If it appears to a district director that a person residing in his or her district was not in fact eligible for the adjustment of status made in his or her case . . . a proceeding shall be commenced by the personal service upon such person of a notice of intent to rescind, which shall inform him or her of the allegations upon which it is intended to rescind the adjustment of his or her status. In such a proceeding the person shall be known as the respondent. The notice shall also inform the respondent that he or she may submit, within thirty days from the date of service of the notice, an answer in writing under oath setting forth reasons why such rescission shall not be made, and that he or she may, within such period, request a hearing before an immigration judge in support of, or in lieu of, his or her written answer. The respondent shall further be informed that he or she may have the assistance of or be represented by counsel or representative of his or her choice qualified under part 292 of this chapter, at no expense to the Government, in the preparation of his or her answer or in connection with his or her hearing, and that he or she may present such evidence in his or her behalf as may be relevant to the rescission.

The district director denied the applicant's Form N-600 based on the determination that the applicant fraudulently obtained lawful permanent resident status and had thus not been lawfully admitted to the U.S. for permanent residence. The district director did not, however, follow the procedures for rescission of adjustment of status set forth in section 246(a) of the Act, or the regulation at 8 C.F.R. § 246.1, prior to denying the applicant's Form N-600. As such, the applicant remains a U.S. lawful permanent resident. Under the present circumstances, the AAO finds that it is proper to remand the matter to the district director for initiation of rescission of adjustment of status or removal proceedings, if deemed appropriate. After completion of the proceedings a new decision on the Form N-600 shall be issued, which, if adverse to the applicant shall be certified to the AAO for review. If proceedings are not initiated, the applicant remains a lawful permanent resident and eligible for issuance of a certificate of citizenship.

ORDER: The matter is remanded to the district director for further action consistent with this decision, and for issuance of a new decision which, if adverse to the applicant, shall be certified to the AAO for review.