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

PUBLIC COPY

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FILE:

Office: ANCHORAGE, AK

Date: **MAY 14 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:

INSTRUCTIONS:

Attached is a notice of intent to reopen the above proceeding. Pursuant to 8 C.F.R. § 103.5(a)(5)(ii), you are allowed 30 days from the date of this notice to respond to the above address.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Anchorage, Alaska. The appeal was sustained by the Administrative Appeals Office (AAO) on October 31, 2007. On March 20, 2008, the AAO notified the applicant of its intent to reopen the matter *sua sponte* and withdraw the October 31, 2007 decision. The applicant responded to the AAO's notice on April 17, 2008. The October 31, 2007 decision will be withdrawn, and the appeal will be dismissed.

The record reflects that the applicant was born on October 17, 1983 in Mexico. The applicant's father, [REDACTED], became a naturalized U.S. citizen on February 27, 1998, when the applicant was 14 years old. The applicant's mother, [REDACTED], is not a U.S. citizen. The applicant was admitted to the United States as a lawful permanent resident on February 11, 1994, when he 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, claiming that he acquired U.S. citizenship upon his father's naturalization.

The field office director denied the applicant's citizenship claim finding that he was not residing in the physical custody of his U.S. citizen parent between February 2001 and the applicant's 18th birthday (on October 17, 2001). The application was denied accordingly.

On appeal, the applicant, through counsel, maintained that he was in the physical custody of his U.S. citizen parent in 2001. In support of his claim, the applicant submitted employment records and letters verifying that he was living and working with his parents in Prescott, Arizona.

On October 31, 2007, the appeal was sustained. On March 20, 2008, the AAO issued a notice of intent to reopen the matter *sua sponte* and withdraw the October 31, 2007 decision. The AAO noted that the evidence in the record was insufficient, and contradictory, and did not establish that the applicant was in his father's legal and physical custody on or after February 27, 2001.

In response to the AAO's notice, applicant's counsel submitted a memorandum stating that the contradictory evidence cited by the AAO was "not sworn testimony" and that one of the restaurant checks listed by the AAO was in fact within the period in question. The applicant also submitted his parents' 2001 Income Tax Return and a letter from a neighbor.

Section 320 of the Act, 8 U.S.C. § 1431, was amended by the Child Citizenship Act of 2000 (CCA), and took effect on February 27, 2001. The CCA benefits all persons who have not yet reached their eighteenth birthdays as of February 27, 2001. Because the applicant was under the age of 18 on February 27, 2001, he 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.

(b) Subsection (a) shall apply to a child adopted by a United States citizen parent if the child satisfies the requirements applicable to adopted children under section 101(b)(1).

The record reflects that on the date of the applicant's father's naturalization, the applicant was under the age of 18 and residing in the United States pursuant to a lawful admission for permanent residence. It is well-established that the CCA may not be applied retroactively. The regulations, at 8 C.F.R. § 320.2, provide that the requirements set forth in the CCA must "have been met after February 26, 2001." Therefore, the applicant must establish that he was in the legal and physical custody of his father on or after February 27, 2001 in order to automatically acquire U.S. citizenship.

The AAO has again reviewed the entire record. The AAO notes that the report prepared by the Yavapai County Adult Probation Department in 2002 indicates that the applicant left Prescott, Arizona in 2000 and did not return until approximately October 2001. *See* Yavapai County Adult Probation Department Report at 5. The report further indicates that the applicant was employed at "T [REDACTED]" in Prescott, Arizona from 1996 to 1998 (and at [REDACTED] from 1999 to present). *Id.* at 6-7. The same information is contained in the 2003 Yavapai County Adult Probation Department Report. The record also includes a letter from Excel Education Centers in Prescott, Arizona verifying the applicant's enrollment, in relevant part, until November 2000 and after April 2002. The AAO notes that the record also includes three checks in the amount of \$150 from [REDACTED] dated February 13, February 28 and October 29, 2001. The record also contains a 2001 W-2 Form issued to the applicant by [REDACTED]. There are also letters in the record purporting to verify that the applicant was residing with his parents, and worked at his family's restaurant, during the period in question. Finally, the record now also includes a copy of the applicant's parents' 2001 income tax return listing the applicant as a dependent (but not qualifying for child tax credit) and a letter from a neighbor.

The AAO finds that the record does not establish, by a preponderance of the evidence, that the applicant was in his father's physical custody between February 27, 2001 and October 17, 2001.¹ The AAO notes that the Probation Department Reports cited above indicate that the applicant was not residing in Prescott, and was not employed at [REDACTED] during the period in question. The AAO further notes that only one of the checks from [REDACTED] is dated within the period in question. The AAO finds that it is unclear, at best, whether the check relates to employment within the period in question. The AAO further finds that the check and the W2 do not, in any event, establish that the applicant was residing with his parents.

The AAO notes the Board of Immigration Appeals finding in *Matter of Tijerina-Villarreal*, 13 I&N Dec. 327, 331 (BIA 1969), that:

¹ The AAO notes that the applicant is not required to establish that he was in his father's custody for the entire period between February 27, 2001 and October 17, 2001. Rather, he would have automatically acquired U.S. citizenship upon fulfillment of the physical custody requirement at any point during that period. The evidence in the record, however, does not establish (by a preponderance of the evidence) that the applicant was at any point during the period in question in his father's physical custody.

[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.)

The AAO notes important discrepancies in the record. The AAO further notes that the owners of the [REDACTED] [REDACTED] are the applicant's parents, and that the letters purporting to verify his employment and residence are from his parents' friends and neighbors. The AAO finds further that the letters from restaurant patrons and community members, as well as the recently submitted letter from [REDACTED], are unspecific, and do not assist in demonstrating that the applicant was in his father's physical custody as required. The record does not contain state payroll tax records, the applicant's income tax record, and medical, educational or financial records corroborating the applicant's claim. The applicant does not provide any explanation for the contradictory evidence in the record, except to state that it was not sworn testimony. The AAO finds that good reasons appear for rejecting the applicant's claim.

A person may only obtain citizenship in strict compliance with the statutory requirements imposed by Congress. *INS v. Pangilinan*, 486 U.S. 875, 885 (1988). Any doubts concerning citizenship are to be resolved in favor of the United States. *Id.* at 883-84; *see also United States v. Manzi*, 276 U.S. 463, 467 (1928) (stating that "citizenship is a high privilege, and when doubts exist concerning a grant of it ... they should be resolved in favor of the United States and against the claimant"). Moreover, "it has been universally accepted that the burden is on the alien applicant to show his eligibility for citizenship in every respect." *Berenyi v. District Director, INS*, 385 U.S. 630, 637 (1967).

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). The applicant has failed to meet his burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.