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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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Ez

[REDACTED]

FILE:

[REDACTED]

Office: NEW YORK, NY

Date: **MAY 21 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 application was denied by the District Director, New York, New York. 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 on December 27, 1987 in Bangladesh. The record further reflects that her parents are [REDACTED] and [REDACTED]. The applicant's parents were married on March 4, 1987 in Bangladesh. The applicant's father became a U.S. citizen upon his naturalization on January 17, 1997, when the applicant was 9 years old. The applicant was admitted to the United States as a lawful permanent resident on July 5, 2005, when she was 17 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 she acquired U.S. citizenship from her father.

The district director denied the applicant's citizenship claim after finding that the applicant was not residing in her father's physical custody. The director's finding was based on the applicant's and her father's testimony that she was living and attending school in Bangladesh. The application was denied accordingly.

On appeal, the applicant's father states that her daughter was in Bangladesh from April 2006 until July 2006 in order to visit her sick grandfather. The applicant's father maintains that his daughter did not attend school in Bangladesh after her admission as a lawful permanent resident in July 2005.

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, she 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.

The AAO finds that the applicant has not established, by a preponderance of the evidence, that she was residing in the United States in the physical custody of her father. The record does not contain any evidence that the applicant was residing in the United States, such as school, tax, employment, medical, or other records. In order to establish eligibility to obtain a certificate of citizenship, the applicant must demonstrate that she was residing in the United States upon her admission as a lawful permanent resident (and before her 18th birthday). The passport stamps alone do not constitute sufficient evidence of residence in the United States, especially in light of the contradictory testimony at her interview.

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). Even courts may not use their equitable powers to grant citizenship, and 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).

Pursuant to 8 C.F.R. § 341.2(c), 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 not met her burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.