



U.S. Citizenship  
and Immigration  
Services

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FILE:

Office: PHOENIX, AZ

Date:

OCT 28 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:

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 Field Office Director, Phoenix, Arizona, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born in Gabon on March 5, 1993. The applicant's parents, as reflected on his birth certificate, are [REDACTED] and [REDACTED]. The applicant's father became a U.S. citizen upon his naturalization in 2007. The applicant's biological mother is not a U.S. citizen. The applicant resides in Guinea. The applicant presently seeks a certificate of citizenship under section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431, based on the claim that he derived citizenship from his father.

The field office director concluded that the applicant did not acquire U.S. citizenship pursuant to section 320 of the Act, 8 U.S.C. § 1431, because he has not been admitted for lawful permanent residency. The application was denied accordingly.

On appeal, the applicant's father states that he resides in the United States, but that his children are in Africa. The applicant indicates that additional evidence will be submitted, but none is in the record.

The Child Citizenship Act of 2000 (CCA) took effect on February 27, 2001. The CCA, which amended sections 320 and 322 of the Act, benefits all persons who have not yet reached their eighteenth birthdays as of February 27, 2001. Because the applicant is under the age of 18, he meets the age requirement for benefits under the CCA.

Section 320 of the Act 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 applicant is residing in Guinea. He is not residing in the United States "pursuant to a lawful admission for permanent residence" as required by section 320(a)(3) of the Act, 8 U.S.C. § 1431(a)(3). Accordingly, the applicant did not acquire U.S. citizenship pursuant to section 320 of the Act.

The AAO further notes that section 322 of the Act, 8 U.S.C. § 1433, applies to children born and residing outside of the United States, and provides that:

(a) A parent who is a citizen of the United States may apply for naturalization on behalf of a child born outside of the United States who has not acquired citizenship automatically under section 320. The Attorney General shall issue a certificate of citizenship to such applicant upon proof, to the satisfaction of the Attorney General, 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 United States citizen parent--

(A) has been physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years; or

(B) has a citizen parent who has been physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years.

(3) The child is under the age of eighteen years.

(4) The child is residing outside of the United States in the legal and physical custody of the applicant [citizen parent] (or, if the citizen parent is deceased, an individual who does not object to the application).

(5) The child is temporarily present in the United States pursuant to a lawful admission, and is maintaining such lawful status.

(b) Upon approval of the application (which may be filed from abroad) and, except as provided in the last sentence of section 337(a), upon taking and subscribing before an officer of the Service within the United States to the oath of allegiance required by this Act of an applicant for naturalization, the child shall become a citizen of the United States and shall be furnished by the Attorney General with a certificate of citizenship.

(c) Subsections (a) and (b) 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).

In order to satisfy the requirements of section 322(a)(4) of the Act, the applicant must establish that he resides *outside of the United States* in the legal and physical custody of his U.S. citizen parent. The applicant is not residing with his U.S. citizen parent. The AAO must therefore conclude that the applicant also cannot establish eligibility for citizenship under section 322 of the 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). 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 in this case has not met his burden. The appeal will therefore be dismissed.

**ORDER:** The appeal is dismissed.