



U.S. Citizenship
and Immigration
Services

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FILE:

Office: ATLANTA

Date: APR 03 2009

IN RE:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Atlanta, Georgia. 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 May 16, 1991 in Vietnam. The applicant's parents, as reflected in his birth certificate, are [REDACTED] and [REDACTED]. The applicant was admitted to the United States as a lawful permanent resident on July 26, 2000. On August 25, 2000, the applicant's father consented to appointing [REDACTED] and [REDACTED] as the applicant's legal guardians. [REDACTED] and [REDACTED] have been U.S. citizens since their naturalization in 2007 and 2004, respectively. The applicant seeks a certificate of citizenship pursuant to section 320 of the Immigration and Naturalization Act (the Act), 8 U.S.C. § 1431, claiming that he acquired U.S. citizenship from his guardian.

The field office director denied the applicant's citizenship claim finding that he had not been adopted, and could not acquire U.S. citizenship from his guardian. The application was denied accordingly.

On appeal, the applicant's guardians maintain that they are the applicant's "adopted guardians." They request that USCIS reconsider the decision based on enclosed school and hospital records.

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).

Section 101(b)(1) of the Act states, in pertinent part, that the term "child" means an unmarried person under twenty-one years of age who is-

(E)(i) [A] child adopted while under the age of sixteen years if the child has been in the legal custody of, and has resided with, the adopting parent or parents for at least two years. . .

(F)(i) [A] child, under the age of sixteen at the time a petition is filed in his behalf to accord a classification as an immediate relative under section 1151(b) of this title, who is an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents . . . who has been adopted abroad by a United States citizen and spouse jointly . . . or who is coming to the United States for adoption by a United States citizen and spouse jointly . . .

The regulation, at 8 C.F.R. § 320.1, defines “adopted” as

adopted pursuant to a full, final and complete adoption. If a foreign adoption of an orphan was not full and final, [or] was defective ... the child is not considered to have been full, finally and completely adopted and must be readopted in the United States.

The record does not contain an adoption decree or any other document evidencing that either Men [REDACTED] or [REDACTED] has adopted the applicant. The guardianship appointment does not satisfy the adoption requirement in sections 101 and 320 of the Act. Therefore, the AAO must conclude that the applicant did not acquire U.S. citizenship upon his guardian’s naturalization.

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 not met his burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.