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

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FILE:

Office: NEW YORK, NY

Date: FEB 11 2009

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.

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 or reopen, 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 District Director, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on July 20, 1997 in China. The applicant was adopted in China on July 10, 2000. The applicant's adoptive parents, [REDACTED] are native-born U.S. citizens. The applicant was admitted to the United States as a lawful permanent resident on July 19, 2000. She was classified as an IR-4 upon admission, as a child "to be adopted in the United States." Although the applicant's adoptive parents are now divorced, the applicant's mother was awarded custody of the applicant in 2004. The applicant seeks a certificate of U.S. citizenship under section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The district director determined that the applicant was admitted to the United States as a "child to be adopted in the United States," in the IR4 category. The director stated that the applicant was required to be re-adopted in New York because her father was not physically present during her adoption abroad. The director therefore found that the applicant did not meet the definition of "child" set forth in sections 101(b)(1)(F) of the Act, 8 U.S.C. § 1101(b)(1)(F), concluded that the applicant was not eligible for citizenship under section 320 of the Act, 8 U.S.C. § 1431, and denied her application.

On appeal, the applicant maintains that the district director erred in requiring that she be re-adopted in New York. The applicant, through her mother, states that her father provided a power of attorney and, as such, she was properly adopted in China and did not require a re-adoption in New York.

Section 320 of the Act states in pertinent part:

(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: Provided, That no natural parent of any such adopted child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act; or

...

(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 in the present case contains an Adoption Registration Certificate and Notarial Certificate of Adoption indicating that the applicant was adopted on July 10, 2000 by [REDACTED]. The record also contains a Power of Attorney executed in 2000 by [REDACTED] authorizing [REDACTED] to act on his behalf on matters relating to the applicant’s adoption.

U.S. Department of State records reflect that the although initially classified as an IR-3, child adopted abroad by a U.S. citizen, the applicant was ultimately granted an IR-4 visa and admitted as such to the United States. The AAO notes in this regard that the regulations indicate, in relevant part, that a child is “coming to be adopted in the United States . . . if . . . both the married petitioner and spouse did not or will not personally see the [child] prior to or during the adoption proceeding abroad.” See 8 C.F.R. § 204.3(f).

The AAO further notes that the New York Domestic Relations Law § 111-c states, in relevant part,

1. A final judgment of adoption granted by a judicial, administrative or executive body of a jurisdiction or country other than the United States shall have the same force and effect in this state as that given to a judgment of adoption entered by a court of competent jurisdiction of New York state, without additional proceedings or documentation provided: (a) either adopting parent is a resident of this state; and (b) the validity of the foreign adoption has been verified by the granting of an IR-3 immigrant visa, or a successor immigrant visa, for the child by the United States Citizenship and Immigration Services.

The AAO finds that the applicant was admitted as an IR-4 and, as such, was required to be re-adopted in New York. Therefore, the AAO cannot find that the applicant was adopted “pursuant to a full, final and complete adoption” as required. Thus, she did not automatically acquire U.S. citizenship pursuant to section 320 of the act, 8 U.S.C. § 1431.

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 the present case has not met her burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.