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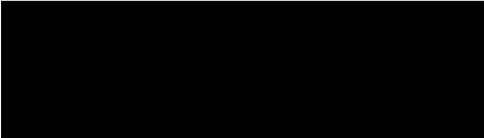
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
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FILE: [REDACTED] Office: OKLAHOMA CITY, OK Date: JUL 08 2009

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under Section 321 of the former  
Immigration and Nationality Act; 8 U.S.C. § 1432.

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).

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Field Office Director, Oklahoma City, Oklahoma, 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 February 7, 1983 in India. The applicant's father, [REDACTED], became a U.S. citizen upon his naturalization in 1994, when the applicant was 11 years old. The applicant's parents were married in 1980. The applicant is residing in the United States pursuant to her admission as lawful permanent resident on April 23, 2001. The applicant's 18<sup>th</sup> birthday was on February 7, 2001. The applicant presently seeks a certificate of citizenship claiming that she derived U.S. citizenship through her father.

The field office director, upon finding that the applicant had reached the age of 18 prior to obtaining her lawful permanent residence, concluded that she was ineligible for citizenship under section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431. The application was accordingly denied.

On appeal, the applicant contends that she first obtained lawful permanent residence in 1985, lived in the United States for over seven years, and subsequently departed with her family as missionaries to India from 1992 to 2001. See Statement by Applicant on Form I-290B, Notice of Appeal to AAO.

Section 320 and 322 of the Act were amended, and section 321 was repealed, by the Child Citizenship Act of 2000 (CCA). The CCA took effect on February 27, 2001, and benefits all persons who had not yet reached their 18th birthday as of February 27, 2001. The applicant was over the age of 18 on February 27, 2001, she therefore does not meet the age requirement for benefits under the CCA. See *Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). Section 321 of the former Act, 8 U.S.C. § 1432, therefore applies to her case.

Section 321 of the former Act provided, in pertinent part, that:

(a) a child born outside of the United States of alien parents, or of an alien parent and a citizen parent who has subsequently lost citizenship of the United States, becomes a citizen of the United States upon fulfillment of the following conditions:

- (1) The naturalization of both parents; or
- (2) The naturalization of the surviving parent if one of the parents is deceased; or
- (3) The naturalization of the parent having legal custody of the child when there has been a legal separation of the parents or the naturalization of the mother if the child was born out of wedlock and the paternity of the child has not been established by legitimation; and if-
- (4) Such naturalization takes place while said child is under the age of 18 years; and

(5) Such child is residing in the United States pursuant to a lawful admission for permanent residence at the time of the naturalization of the parent last naturalized under clause (2) or (3) of this subsection, or thereafter begins to reside permanently in the United States while under the age of 18 years.

8 U.S.C. § 1432.

Pursuant to section 321 of the former Act, 8 U.S.C. § 1432, the applicant must establish, in relevant part, that both parents naturalized prior to her 18<sup>th</sup> birthday, and that she was residing in the United States as a lawful permanent resident at the time, or “thereafter . . . while under the age of 18 years.”

The applicant has established that she resided in the United States as a lawful permanent resident from 1985 to 1992. She subsequently abandoned her residence in the United States but was re-admitted as a lawful permanent resident in 2001 (after her 18<sup>th</sup> birthday). The applicant’s father became a U.S. citizen upon his naturalization in 1994. The applicant’s Form N-600, Application for Certificate of Citizenship, indicates that the applicant’s mother is also a U.S. citizen. There is no indication in the applicant’s file regarding the date of her mother’s naturalization. The AAO can only conclude, based on the evidence in the record, that the applicant’s mother naturalized after her re-admission to the United States in 2001. Further, the applicant was not residing in the United States as a lawful permanent resident in 1994 or thereafter, until after her 18<sup>th</sup> birthday. Therefore, the AAO must find that the applicant did not derive U.S. citizenship pursuant to section 321 of the former Act, 8 U.S.C. § 1432, or any other provision of the Act.<sup>1</sup>

The AAO notes that the requirements for citizenship, as set forth in the Act, are statutorily mandated by Congress and USCIS lacks statutory authority to issue a certificate of citizenship when an applicant fails to meet the relevant statutory provisions set forth in the Act. 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).

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”

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<sup>1</sup> The AAO notes that the applicant did not automatically acquire U.S. citizenship under section 320 of the former Act, 8 U.S.C. § 1431, because she was not residing in the United States as a lawful permanent resident in 1994 (when her father naturalized) or under section 322 of the former Act, 8 U.S.C. § 1433, because she is over 18 years old (and she has not been approved or taken the required Oath).

or “more likely than not.” *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). The applicant failed to meet her burden of proof and the appeal will be dismissed.

**ORDER:** The appeal is dismissed.