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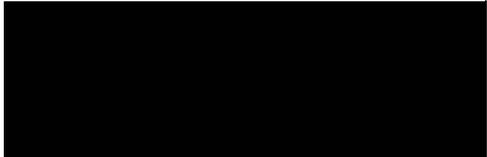
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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FILE: [REDACTED] Office: PHILADELPHIA, PA Date: JUN 02 2009

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:



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

The record reflects that the applicant was born September 13, 1987 in Bosnia Herzegovina. Her father, [REDACTED] became a U.S. citizen upon his naturalization on September 20, 2000. The applicant became a lawful permanent resident of the United States on June 23, 2006. The applicant reached the age of 18 on September 13, 2005. She presently seeks a certificate of citizenship claiming that she derived U.S. citizenship through her father.

The field office director found the applicant ineligible for citizenship under section 320 of the Immigration and Nationality Act (the Act), as amended by the Child Citizenship Act of 2000 (CCA). The director's finding was based on the fact that the applicant was over the age of 18 when she was admitted to the United States as a lawful permanent resident. The application was denied accordingly.

On appeal, the applicant, through counsel, contends that she derived U.S. citizenship upon her father's naturalization pursuant to "section 2172, R.S. (Act 4/14/1802)." See Notice of Appeal to the AAO, Form I-290B.

"The applicable law for transmitting citizenship to a child born abroad when one parent is a U.S. citizen is the statute that was in effect at the time of the child's birth." *Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1029 (9th Cir. 2000) (citations omitted). The applicant in this case was born in 1987.¹

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 had 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.

¹ Though not clear, the AAO assumes that counsel was referring to The Act of 1802, a statute addressing naturalization enacted in 1802, when citing "section 2172, R.S. (Act 4/14/1802)." Over the past 200 years the naturalization laws of the United States have been revised and changed numerous times. As noted in the text, however, the applicable law in citizenship cases is the law in effect at the time of the applicant's birth, not any previous version of the law or a law no longer in effect. Counsel cited no authority to support her claim that this particular statute is applicable to the applicant.

- (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 in this case was over the age of 18 when she was admitted to the United States as a lawful permanent resident. She therefore did not derive U.S. citizenship under section 320 of the Act, as amended. The AAO finds that the applicant is therefore ineligible for a certificate of citizenship under this or any other provision of the Act.

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 her burden and the appeal will therefore be dismissed.

ORDER: The appeal is dismissed.