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

E2

FILE:

Office: SAN FRANCISCO, CA

Date: MAR 05 2009

IN RE:

APPLICATION:

Application for Certificate of Citizenship under Section 320 of the Immigration and Nationality Act, 8 U.S.C. § 1431.

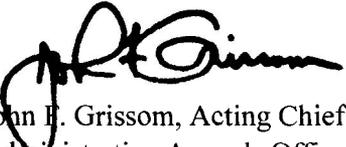
ON BEHALF OF APPLICANT:

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 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, San Francisco, California, 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 Somalia on November 5, 1992. The applicant's father, [REDACTED], became a U.S. citizen upon his naturalization on April 4, 2006. The applicant was admitted to the United States as a refugee on December 13, 2000. The applicant's Form I-485, Application to Register Permanent Residence or Adjust Status, was denied on May 2, 2005. The applicant presently seeks a certificate of citizenship under section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401, based on the claim that he derived citizenship from his father.

The field office director concluded that the applicant did not derive U.S. citizenship upon his father's naturalization because he has not been admitted as a lawful permanent resident. The application was denied accordingly.

On appeal, the applicant's father indicates that he submitted the documents required for the applicant's adjustment of status to lawful permanent residence in 2005. *See Statement from Applicant's Father on Form I-290B, Notice of Appeal to the AAO.*

The Child Citizenship Act of 2000 (CCA), which took effect on February 27, 2001, benefits all persons who had 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, as amended by the CCA, 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 was admitted to the United States as a refugee. The applicant 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).¹ Accordingly, the applicant did not acquire U.S. citizenship pursuant to section 320 of the Act.

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

¹ The AAO notes again that the applicant's Application to Register Permanent Residence or Adjust Status, Form I-485, was denied in 2005. The record suggests that the applicant attempted to appeal the denial of his Form I-485. The regulations, however, do not provide for an appeal to USCIS of a denial of adjustment of status. The AAO further notes that a motion to reopen or reconsider the denial would now be untimely.

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 residing with his father, in the United States. The AAO must therefore conclude that the applicant 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.