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



U.S. Citizenship
and Immigration
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FILE:

Office: NEW YORK

Date: MAR 19 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:

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.

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 sustained.

The record reflects that the applicant was born in China on July 30, 1989. The applicant was adopted by [REDACTED] and [REDACTED], native-born U.S. citizens. The applicant was admitted to the United States as a lawful permanent resident on October 12, 1996. He was re-adopted in the State of New York on January 13, 1998. The applicant presently seeks a certificate of citizenship pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The district director denied the application upon finding that the applicant had failed to establish that he is the same individual who was adopted in 1998. The director noted that the date of birth in the adoption proceedings was April 12, 1991, whereas the date of birth in the immigrant visa proceedings was July 30, 1989.

On appeal, the applicant, through counsel, submits, in relevant part, an amended birth certificate and a court order of the Surrogates Court of the State of New York verifying the applicant's July 30, 1989 date of birth. The applicant also submits a copy of his U.S. passport, recently issued by the U.S. Department of State.

The Child Citizenship Act of 2000 (CCA), which took effect on February 27, 2001, amended sections 320 and 322 of the Act, 8 U.S.C. §§ 1431 and 1433. The CCA benefits all persons who had not yet reached their 18th birthdays as of February 27, 2001. Because the applicant was under 18 years old 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)(E) of the Act states, in pertinent part, that the term "child" means an unmarried person under twenty-one years of age who is-

- (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;

Section 101(b)(1)(F) of the Act , 8 U.S.C. § 1101(b)(1)(F), defines “orphan” in pertinent part as:

[A] child, under the age of sixteen at the time a petition is filed . . . who is an orphan . . . who has been adopted abroad by a United States citizen and spouse jointly, or by an unmarried United States citizen at least twenty-five years of age, who personally saw and observed the child prior to or during the adoption proceedings; or who is coming to the United States for adoption by a United States citizen and spouse jointly, or by an unmarried United States citizen at least twenty-five years of age, who have or has complied with the preadoption requirements, if any, of the child's proposed residence.

The record reflects that the applicant was admitted to the United States as a lawful permanent resident in 1996, when he was 7 years old. He was adopted in China in 1996, and readopted in the United States in 1998. His adoptive parents are native-born U.S. citizens. As such, the applicant automatically acquired U.S. citizenship pursuant to section 320 of the Act, as amended by the CCA.

The AAO notes that the record on appeal clearly establishes that the applicant is the individual who was adopted in China, and who immigrated to the United States with his adoptive parents to be readopted. The AAO further notes that the record contains a copy of the applicant’s U.S. passport. In *Matter of Villanueva*, 19 I&N Dec. 101 (BIA 1984), the Board of Immigration Appeals (Board) held that a valid U.S. passport is conclusive proof of U.S. citizenship. Specifically, the Board held in *Matter of Villanueva* that:

unless void on its face, a valid United States passport issued to an individual as a citizen of the United States is not subject to collateral attack in administrative immigration proceedings but constitutes conclusive proof of such person’s United States citizenship.

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. The applicant in the present case has met his burden to establish that he automatically acquired U.S. citizenship as the adopted child of U.S. citizen parents who immigrated to the United States prior to his 18th birthday. The appeal will therefore be sustained.

ORDER: The appeal is sustained.