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



U.S. Citizenship  
and Immigration  
Services

E2

[REDACTED]

FILE:

Office: ST. PAUL, MN

Date:

**MAR 30 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:

SELF-REPRESENTED<sup>1</sup>

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

<sup>1</sup> The applicant's file does not contain a Form G-28, Notice of Entry of Appearance as Attorney or Representative. The AAO notes, however, that [REDACTED] has submitted documentation in support of the applicant's appeal.

**DISCUSSION:** The application was denied by the Field Office Director, St. Paul, Minnesota, and is now before the Administrative Appeals Office (AAO) on certification. The director's decision on certification will be withdrawn. The application will be approved.

The record reflects that the applicant was born on [REDACTED] in Haiti. The applicant was adopted in Haiti on October 4, 2005. The applicant's adoptive parents, [REDACTED] are native-born U.S. citizens. They were married in 1993. The applicant was admitted to the United States as a lawful permanent resident on February 22, 2006. He was classified as an IR-4 upon admission, as a child "to be adopted in the United States." The applicant was re-adopted in South Dakota on February 5, 2009. 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.

In her certification decision, the field office 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 South Dakota and concluded that the applicant did not meet the definition of "child" set forth in sections 101(b) and (c) of the Act, 8 U.S.C. §§ 1101(b) and (c). Thus, the director concluded that the applicant was not eligible for citizenship under section 320 of the Act, 8 U.S.C. § 1431, and denied her application.

In response to the director's certification, the applicant submitted a copy of an order of adoption entered by the Sixth Judicial Circuit in the State of South Dakota, County of Jones. The adoption decree, which was entered on February 5, 2009, orders the applicant's adoption as the child of [REDACTED]. The applicant was 17 years old at the time of his adoption.

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

...

(ii) subject to the same provisos as in clause (i), a child who:

(III) is otherwise described in clause (i), except that the child was adopted while under the age of 18 years;

(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 . . . ;or,

...

(ii) subject to the same provisos as in clause (i), a child who:

(III) is otherwise described in clause (i), except that the child is under the age of 18 at the time a petition is filed in his or her behalf to accord a classification as an immediate relative under section 201(b);

...

Section 101(c) of the Act states that:

(1) The term "child" means an unmarried person under twenty-one years of age and includes a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in the United States or elsewhere, and, except as otherwise provided in sections 320, and 321 of title III, a child adopted in the United States, if such legitimation or adoption takes place before the child reaches the age of 16 years (except to the extent that the child is described in subparagraph (E)(ii) or (F)(ii) of subsection (b)(1)), and the child is in the legal custody of the legitimating or adopting parent or parents at the time of such legitimation or adoption.

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 now contains a copy of the applicant's adoption order, entered in South Dakota on February 5, 2009. The applicant has thus been re-adopted in the United States, prior to his 18<sup>th</sup> birthday. The AAO notes also that he was admitted as a lawful permanent resident in 2006, based on an immediate relative orphan petition filed by his adoptive U.S. citizen parents in 2005. The AAO further notes that the applicant has been in his adoptive parents' legal custody since 2005. Thus, the AAO concludes that he has automatically acquired 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 met his burden. The director's decision on certification will be withdrawn. The application will be approved.

**ORDER:** The director's decision on certification is withdrawn, the application is approved.