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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
and Immigration
Services**

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[REDACTED]

FILE:

[REDACTED]

Office: OKLAHOMA CITY, OK

Date:

OCT 21 2009

IN RE:

[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

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).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Oklahoma City, Oklahoma, is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on July 24, 1991 in Jordan. The applicant's parents, as listed in his birth certificate, are [REDACTED] and [REDACTED]. The applicant's parents were married in 1988, and divorced in 1997. The applicant's father became a U.S. citizen upon his naturalization on January 16, 2009. The applicant seeks a certificate of citizenship pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431, based on the claim that he acquired U.S. citizenship upon his father's naturalization.

The field office director concluded that the applicant did not acquire U.S. citizenship pursuant to section 320 of the Act, 8 U.S.C. § 1431, because he had not been admitted as a lawful permanent resident. The application was denied accordingly.

On appeal, the applicant states that he is in his father's custody, and therefore acquired U.S. citizenship upon his father's naturalization. In support of his claim, the applicant submits, in relevant part, his and his father's affidavit as well as a copy of his parents' divorce decree.

Section 320 of the Act was amended by the Child Citizenship Act of 2000 (CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), and took effect on February 27, 2001. The CCA benefits all persons who had not yet reached their 18th birthdays as of February 27, 2001. CCA § 104; *Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 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.

There is no evidence in the record establishing that the applicant has been admitted for lawful permanent residence. Therefore, he has not acquired U.S. citizenship pursuant to section 320 of the Act, 8 U.S.C. § 1431.¹

¹ Having found the applicant ineligible for U.S. citizenship on this basis, the AAO need not address the issue of his father's custody. The AAO will note, however, that the applicant's parents' divorce decree awarded legal custody of the applicant to his mother.

The AAO further notes that the applicant is ineligible to derive U.S. citizenship under section 322 of the Act, 8 U.S.C. § 1433, which generally provides for U.S. citizenship for children of U.S. citizens residing abroad. In this regard, the AAO notes that the applicant is not residing abroad.

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. The applicant has not been admitted to the United States as a lawful permanent resident as required by section 320 of the Act. He therefore has not acquired U.S. citizenship. The applicant in the present case has not met his burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.