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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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FILE: [redacted] Office: VERMONT SERVICE CENTER Date: SEP 25 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

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).

Ellen C. Johnson

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born January 13, 1989 in Nigeria. The applicant's mother, [redacted] became a U.S. citizen upon her naturalization on November 26, 2008, when the applicant was 19 year old. The applicant claims that her father is [redacted] and that he naturalized in 2003. The applicant's mother married [redacted] in 1980. DNA evidence in the record indicates that there is no probability that [redacted] is the applicant's biological father. The applicant became a lawful permanent resident of the United States on February 14, 2005. She presently seeks a certificate of citizenship claiming that she derived U.S. citizenship through her "father."

The 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 not [redacted] biological child. The application was denied accordingly.

On appeal, the applicant submits her mother's naturalization certificate. She states that her mother has been married to [redacted] since 1980. *See* Notice of Appeal to the AAO, Form I-290B. She maintains that she acquired U.S. citizenship upon her mother's naturalization. *Id.*

"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 1989. Section 320 of the Act, 8 U.S.C. § 1431, as amended by the Child Citizenship Act of 2000 (CCA), applies to this case.[1]

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] The CCA took effect on February 27, 2001 and benefits all persons who had not yet reached their eighteenth birthdays as of the effective date. Because the applicant was under the age of 18 on February 27, 2001, she meets the age requirement for benefits under the CCA.

(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(c) of the Act, 8 U.S.C. § 1101(c) states, in pertinent part, that for Title III naturalization and citizenship purposes:

> 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 . . . if such legitimation . . . takes place before the child reaches the age of 16 years . . . and the child is in the legal custody of the legitimating . . . parent or parents at the time of such legitimation

It is well-established that, except in the case of adoption, there must be a blood relationship between the citizen parent and the child seeking to acquire citizenship through the parent. See 8 Whiteman, Digest of International Law, at 119 (1967) explaining acquisition of U.S. nationality at birth through *jus soli* or *jus sanguinis* under the INA). Black's Law Dictionary defines "*jus sanguinis*" as "the right of blood. The principle that a person's citizenship is determined by the citizenship of the parents." The Act specifically provides for acquisition of U.S. citizenship through adoptive parents in certain circumstances. No provision of law provides for the acquisition or derivation of citizenship in cases where, as here, the parent is not the natural or adoptive parent.[2] Therefore, the AAO must conclude that the applicant did not acquire U.S. citizenship upon [redacted] naturalization.

The AAO also must conclude that the applicant did not acquire U.S. citizenship through her mother because she was over the age of 18 when her mother naturalized. Section 320 of the Act provides for acquisition of U.S. citizenship only upon the fulfillment of the stated conditions prior to the applicant's 18th birthday. The AAO finds that the applicant is therefore ineligible for a Certificate of Citizenship under section 320 or any other provision of the Act.

The requirements for citizenship, as set forth in the Act, are statutorily mandated by Congress, and USCIS lacks statutory authority to issue a Certificate of Citizenship when an applicant fails to meet the relevant statutory provisions set forth in the Act. A person may only obtain citizenship in strict

[2] The record does not contain an adoption decree or any other document indicating that the applicant was adopted by [redacted]

compliance with the statutory requirements imposed by Congress. *INS v. Pangilinan*, 486 U.S. 875, 885 (1988); *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. 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.