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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:

Office: PHOENIX, AZ

Date:

APR 16 2010

IN RE:

APPLICATION:

Application for Certificate of Citizenship under Former Section 320 of the Immigration and Nationality Act; 8 U.S.C. § 1431 (1961).

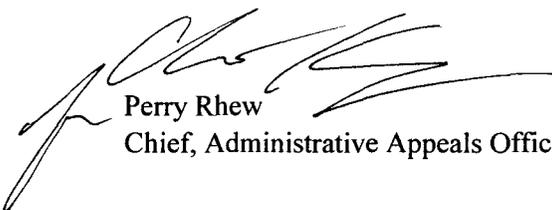
ON BEHALF OF APPLICANT:

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, 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, Phoenix, Arizona, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on September 28, 1961 in Canada. The applicant was adopted in 1973 by [REDACTED] and [REDACTED], native-born U.S. citizens. The applicant claims that he acquired U.S. citizenship through his adoptive parents.

The field office director evaluated the applicant's eligibility for citizenship under section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431, as amended by the Child Citizenship Act of 2000 (CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000). The director denied the applicant's claim finding that he had not established that his parents were U.S. citizens or that he was admitted to the United States as a lawful permanent resident.

On appeal, the applicant submits a copy of his adoptive mother's birth certificate, her military records and her death certificate.

The AAO notes that "[t]he 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" *See Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1028 n.3 (9th Cir. 2000) (internal citations omitted). The applicant was born in 1961. Former section 320 of the Act, 8 U.S.C. § 1431 (1961), is applicable to the present case.¹

Former section 320 of the Act, 8 U.S.C. § 1431 (1961), provided, in pertinent part, that:

(a) a child born outside of the United States, one of whose parents at the time of the child's birth was an alien and the other of whose parents then was and never thereafter ceased to be a citizen of the United States, shall, if such parent is naturalized, become a citizen of the United States, when -

(1) such naturalization takes place while such child is under the age of eighteen years; and

(2) such child is residing in the United States pursuant to a lawful admission for permanent residence at the time of the naturalization or thereafter begins to reside permanently in the United States while under the age of eighteen years.

(b) Subsection (a) of this section shall apply to an adopted child only if the child is residing in the United States at the time of naturalization of such adoptive parent, in

¹ Section 320 of the Act, as amended by the CCA, applies only to persons who were not yet 18 years old as of February 27, 2001 (the CCA's effective date). Because the applicant was over the age of 18 on February 27, 2001, he is not eligible for the benefits of section 320 of the amended Act. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001).

the custody of his adoptive parents, pursuant to a lawful admission for permanent residence.

The applicant did not acquire U.S. citizenship under section 320 of the former Act, *supra*, because it provided for acquisition of U.S. citizenship only upon the naturalization of a parent, not through a native-born U.S. citizen parent. The applicant's adoptive parents are native-born U.S. citizens.

The AAO further finds that the applicant also did not acquire U.S. citizenship pursuant to former section 301(a)(7) of the Act, 8 U.S.C. § 1401(a)(7)(1961), because he is not the biological child of a U.S. citizen.² The AAO therefore concludes that the applicant did not acquire or derive U.S. citizenship under any applicable provision of the Act.³

The regulation at 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 is statutorily ineligible to obtain a certificate of citizenship. He has not met his burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.

² Former section 301(a)(7) provides that the following shall be nationals and citizens of the United States at birth:

[A] person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years: *Provided*, That any periods of honorable service in the Armed Forces of the United States by such citizen parent may be included in computing the physical presence requirements of this paragraph.

³ The AAO notes, however, that the applicant was admitted to the United States as a lawful permanent resident on December 21, 1972 and, as such, if eligible, may apply for naturalization under section 316 of the Act, 8 U.S.C. § 1427.