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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

[redacted]

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FILE: [redacted] Office: PHILADELPHIA, PA Date: DEC 16 2010

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Philadelphia, Pennsylvania, 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 October 18, 1992 in Jamaica. The applicant's mother, as indicated on her birth certificate, is [redacted] The applicant's father's name is not listed on the birth certificate. The applicant's mother is married to [redacted] a native-born U.S. citizen. The applicant, through her step-father, seeks a certificate of citizenship.

The field office director denied the applicant's citizenship claim upon finding that the applicant could not acquire U.S. citizenship through a step-parent. The director noted that the applicant did not meet the definition of "child" under section 101(c) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(c).[1]

On appeal, the applicant indicates that her mother would soon become a U.S. citizen. See Statement of the Applicant on Form I-290B, Notice of Appeal to the AAO.

The AAO reviews these proceedings *de novo*. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The applicable law for derivative citizenship purposes is "the law in effect at the time the critical events giving rise to eligibility occurred." *See Minasyan v. Gonzales*, 401 F.3d 1069, 1075 (9th Cir. 2005). Section 320 of the Act, as amended by the Child Citizenship Act of 2000 (the CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), provides for automatic acquisition of U.S. citizenship upon the fulfillment of certain conditions prior to a child's eighteenth birthday.[2]

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[1] Section 101(c) of the Act 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.

[2] Section 320 of the Act, as amended, 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.

USCIS records show that the applicant's mother became a U.S. citizen upon her naturalization on January 20, 2010. The applicant was under the age of 18 years when her mother naturalized. Thus, the applicant may have automatically acquired U.S. citizenship under section 320 of the Act upon her mother's naturalization. Nevertheless, the applicant's mother was not a U.S. citizen at the time of filing the Form N-600, Application for Certificate of Citizenship, on September 2, 2009. Pursuant to the regulation at 8 C.F.R. § 103.2(b)(1), an applicant must establish eligibility for the requested benefit at the time of filing the application. The applicant was not eligible for a certificate of citizenship when the application was filed. The appeal must therefore be dismissed.

ORDER: The appeal is dismissed.[3]

[3] The appeal is dismissed without prejudice to the applicant to file a motion to reopen pursuant to the regulation at 8 C.F.R. § 341.6.