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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
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FILE:



Office: DALLAS, TX

Date:

MAY 04 2010

IN RE:



APPLICATION: Application for Certificate of Citizenship under Section 320 of the
Immigration and Nationality Act; 8 U.S.C. § 1431

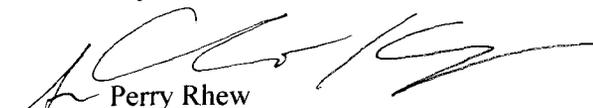
ON BEHALF OF APPLICANT:

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, Dallas, Texas, 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 January 1, 1995 in Iran. The applicant's mother, [REDACTED], became a U.S. citizen upon her naturalization on August 18, 2009. The applicant obtained lawful permanent resident status in the United States as of May 30, 2006. The applicant presently seeks a certificate of citizenship claiming that he derived U.S. citizenship through his mother.

The field office director, upon finding that the applicant had not established that he had a U.S. citizen parent, concluded that he was ineligible for citizenship under section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431. The application was accordingly denied.

On appeal, the applicant's mother maintains that she was advised to file the applicant's Form N-600, Application for Certificate of Citizenship, simultaneously with her Form N-400, Application for Naturalization. See Statement of the Applicant's Mother dated August 24, 2009. A copy of the applicant's mother's naturalization certificate was submitted in support of the appeal.

The Child Citizenship Act of 2000 (CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), which took effect on February 27, 2001, amended sections 320 and 322 of the Act, and repealed section 321 of the Act. The provisions of the CCA are not retroactive, and the amended provisions of section 320 and 322 of the Act apply only to persons who were not yet 18 years old as of February 27, 2001. Because the applicant was under the age of 18 on February 27, 2001, he is eligible for the benefits of the amended Act. See *Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001).

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.

The record in this case reflects that the applicant's mother became a U.S. citizen in 2009, when the applicant was 14 years old. The applicant was admitted to the United States as a lawful permanent resident as of 2006, when he was 11 years old. The applicant therefore meets the requirements of

sub-sections (1) and (2) of section 320 of the Act, as amended. The question remains whether the applicant can establish that he is residing in the United States in his mother's legal custody.

Regarding legal custody, the regulation at 8 C.F.R. § 320.1 states, in pertinent part:

Legal custody refers to the responsibility for and authority over a child.

(1) For the purpose of the CCA, the Service will presume that a U.S. citizen parent has legal custody of a child, and will recognize that U.S. citizen parent as having lawful authority over the child, absent evidence to the contrary, in the case of:

(i) A biological child who currently resides with both natural parents (who are married to each other, living in marital union, and not separated),

(ii) A biological child who currently resides with a surviving natural parent (if the other parent is deceased)

The regulation further specifies that “[i]n case of divorce, legal separation, or adoption, documentation of legal custody” must be submitted. 8 C.F.R. § 320.3(b)(1)(vi).

In this case, the record indicates that the applicant's parents were married in 1986. The applicant's Form N-600, Application for Certificate of Citizenship, indicates that his father resides in Iran and has never been to the United States. On appeal, the applicant's mother states, “I am a single mom,” but the record lacks evidence that the applicant's father is deceased or that his parents have divorced or separated and that the applicant's mother was awarded legal custody of the applicant. The applicant therefore cannot establish that he automatically acquired U.S. citizenship upon his mother's naturalization under section 320 of the Act, 8 U.S.C. § 1431.

It is well established that “[t]here must be strict compliance with all the congressionally imposed prerequisites to the acquisition of citizenship.” *Fedorenko v United States*, 449 U.S. 490, 506 (1981). The burden of proof in these proceedings is on the claimant to establish the claimed citizenship by a preponderance of the evidence. Section 320 of the Act, 8 U.S.C. § 1431; 8 C.F.R. § 320.2. The applicant has not met his burden to establish that he is residing in the United States in his mother's legal custody. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.