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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

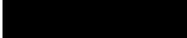


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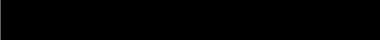


FILE: 

Office: ATLANTA, GA

Date:

NOV 15 2010

IN RE: Applicant: 

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

ON BEHALF OF APPLICANT:

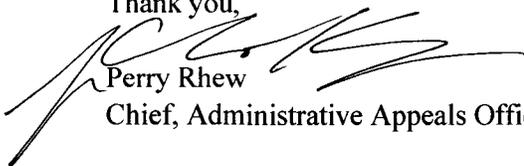
SELF-REPRESENTED

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. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. 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, Atlanta, Georgia, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is an Ethiopian national was born on [REDACTED] 1990 in Sudan. The applicant was admitted to the United States as a refugee on August 26, 1992. The applicant's mother, [REDACTED] became a U.S. citizen upon her naturalization on April 7, 2003. The applicant seeks a certificate of citizenship claiming that he derived U.S. citizenship through his mother pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The field office director denied the application finding that the applicant had failed to respond to repeated requests for evidence. The application was deemed abandoned.

On appeal, the applicant's mother states that she wishes for her son to become a U.S. citizen. See Statement on Form I-290B, Notice of Appeal to the AAO. The appeal is accompanied by an Affidavit of Birth evidencing the applicant's birth in Sudan in 1990.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The applicant has not established his eligibility for derivative citizenship and the appeal will be dismissed for the reasons discussed below.

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). The applicant was born in 1990. Therefore, sections 320 and 322 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), are applicable to his case.

Section 320 of the Act provides, 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 applicant has not been admitted to the United States as a lawful permanent resident and therefore did not acquire U.S. citizenship automatically under section 320 of the Act. U.S. Citizenship and Immigration Services (USCIS) records indicate that the applicant filed a Form I-485,

Application to Adjust Status, in November 2009, which remains pending. Accordingly, the applicant has not yet obtained lawful permanent residency.

The applicant bears the burden of proof in these proceedings to establish the claimed citizenship. Section 341 of the Act, 8 U.S.C. § 1452; 8 C.F.R. § 320.2(a). The applicant has failed to demonstrate his eligibility for citizenship under section 320 or any other provision of the Act. His appeal will therefore be dismissed. This decision is rendered without prejudice to the filing of a naturalization application should the applicant obtain lawful permanent residency and meet the other requirements for naturalization in the future.

ORDER: The appeal is dismissed.