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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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Services

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NOV 29 2010

FILE: [REDACTED] Office: CHICAGO, IL Date:

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, Chicago, Illinois, 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 [REDACTED] 2003 in the United Kingdom. The applicant's parents, as indicated on his birth certificate, are [REDACTED] and [REDACTED]. The applicant was admitted to the United States as a lawful permanent resident on February 21, 2008. The applicant's mother married [REDACTED] on November 22, 2004. Mr. [REDACTED] became a U.S. citizen upon his naturalization on June 20, 2003. He seeks a certificate of citizenship on the applicant's behalf, claiming that the applicant acquired U.S. citizenship under section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The field office director denied the applicant's citizenship claim upon finding that the applicant had failed to establish that he was adopted by his step-father and that he was therefore ineligible to acquire U.S. citizenship pursuant to section 320 of the Act.

On appeal, the applicant, through his step-father, maintains that he was adopted and that he acquired U.S. citizenship pursuant to section 320 of the Act. *See Applicant's Appeal Statement.*

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 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 2003. Therefore, 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), is 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.

- (b) Subsection (a) shall apply to a child adopted by a United States citizen if the child satisfies the requirements applicable to adopted children under section 101(b)(1).¹

The regulation, at 8 C.F.R. § 320.1, defines “adopted” as “adopted pursuant to a full, final and complete adoption.” The regulations further provide that an adopted child “must meet all of the requirements in [8 C.F.R. § 320.2(a)] as well as satisfy the requirements applicable to adopted children under section 101(b)(1) of the Act.”

The applicant has not been adopted by his step-father, Mr. [REDACTED]. The record contains a document entitled “Legal Decree” purporting to be evidence of the applicant’s adoption. The document, however, is, at best, only evidence that Mr. [REDACTED] is “willing to adopt” the applicant and be responsible for his “life and medical expenses.” See “Legal Decree.” The record does not contain any evidence of a full, final and complete adoption.

The Act defines the term “child,” with respect to citizenship and nationality, in section 101(c), 8 U.S.C. § 1101(c). Section 101(c) of the Act provides that:

...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, and except as otherwise provided in section 320 and 321 of the title III, a child adopted in the United States, if such legitimation or adoption takes place before the child reaches the age of 16 years . . . and the child is in the legal custody of the legitimating or adopting parent or parents at the time of such legitimation or adoption.

The definition of child in section 101(c) of the Act does not include step-children. Therefore, the applicant did not acquire U.S. citizenship through his step-father Mr. [REDACTED].

¹ Section 101(b)(1) of the Act, 8 U.S.C. § 1101(b)(1), states, in pertinent part, that the term “child” means an unmarried person under twenty-one years of age who is-

(E)(i) a child adopted while under the age of sixteen years if the child has been in the legal custody of, and has resided with, the adopting parent or parents for at least two years . . .

(F)(i) a child, under the age of sixteen at the time a petition is filed in his behalf to accord a classification as an immediate relative under section 201(b) of this title, who is an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents . . . who has been adopted abroad by a United States citizen and spouse jointly . . . or who is coming to the United States for adoption by a United States citizen and spouse jointly

The applicant bears the burden of proof in these proceedings to establish the claimed citizenship by a preponderance of the evidence. Section 341 of the Act, 8 U.S.C. § 1452; 8 CFR § 320.3(b). The AAO finds that the applicant has not established that he was adopted by a U.S. citizen, or that he otherwise met any of the statutory requirements of the Act for transmission of U.S. citizenship. His appeal will therefore be dismissed.

ORDER: The appeal is dismissed.