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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

E₂



FILE:



Office: CHICAGO, IL

Date:

FEB 15 2011

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, 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 January 6, 1994 in Jordan. The applicant was admitted to the United States as a lawful permanent resident on March 5, 2004, when she was 10 years old. The applicants' father, [REDACTED] was born in the United States on February 24, 1970. The applicant resides in the custody of her grandfather, [REDACTED], who became a U.S. citizen upon his naturalization on August 1, 1972. The applicant seeks a certificate of citizenship claiming that she acquired U.S. citizenship 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 could not acquire U.S. citizenship under section 320 of the Act because she was not residing in her citizen parents' custody. Further, the director noted that the applicant had failed to submit any evidence of her father's physical presence in the United States to support a claim that she acquired U.S. citizenship at birth under section 301 of the Act.

On appeal, the applicant's grandfather explains that he has had custody of the applicant since her parents' divorce. *See* Statement in the Form I-290B, Notice of Appeal to the AAO. Further, the applicant's grandfather indicates that the applicant's father resides in Ohio. *Id.*

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). The applicant was born in 1994. She was under 18 years old on the effective date of the Child Citizenship Act of 2000 (the CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000) (CCA). Therefore, section 320 of the Act, as amended by the CCA, is applicable to her 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 was admitted to the United States as a lawful permanent resident and her father is a native-born U.S. citizen. Nevertheless, the applicant is not residing in her citizen father's physical or legal custody. Therefore, she is statutorily ineligible to acquire U.S. citizenship under section 320(a)(3) of the Act. Section 320 of the Act does not provide for acquisition of U.S. citizenship through a custodial grandparent.

The applicant has not provided any evidence in support of a claim of acquisition of U.S. citizenship at birth under section 301 of the Act. Section 301(g) of the Act states, in pertinent part, 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 five years, at least two of which were after attaining the age of fourteen years . . .

The field office director noted the lack of evidence of the applicant's father's physical presence in the United States. The applicant has not supplied any additional evidence in this regard on appeal. The evidence in the record does not establish that the applicant's father was physically present in the United States for five years prior to the applicant's birth, two of which were after the age of 14.

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 meet her burden and her appeal will therefore be dismissed. This decision is rendered without prejudice to the filing of a motion to reopen in accordance to 8 C.F.R. § 103.5 or a naturalization application should the applicant meet the other requirements for naturalization set forth in section 316 of the Act, 8 U.S.C. § 1427.

ORDER: The appeal is dismissed.