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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

E-2

FILE:

Office: SACRAMENTO, CA Date:

**JAN 13 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, Sacramento, California, 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 March 15, 1997 in the Philippines. The applicant was admitted to the United States as a non-immigrant on April 21, 2007. The applicant's mother was married to [REDACTED], a native-born U.S. citizen, on April 28, 2007. The applicant was adopted by her step-father on October 16, 2008. The applicant's mother is not a U.S. citizen. 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 had not been admitted to the United States as a lawful permanent resident.

On appeal, the applicant's father provides, *inter alia*, an explanation why the applicant should have been granted lawful permanent resident status. See Statement 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 applicant has not established her eligibility for U.S. 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 (9<sup>th</sup> Cir. 2005). The applicant was born in 1997. 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's Form I-485, Application to Adjust Status was denied on September 5, 2008.

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 her eligibility for citizenship under section 320 or any other provision of the Act. Her appeal will therefore be dismissed. This decision is rendered without prejudice to the filing, should the applicant obtain lawful permanent residence, of a motion to reopen pursuant to 8 C.F.R. § 341.6 prior to her eighteenth birthday or a naturalization application should she meet the other requirements for naturalization in the future.

**ORDER:** The appeal is dismissed.