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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

Date: **OCT 14 2011**

Office: LOS ANGELES, CA

File: [REDACTED]

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:

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, Los Angeles, 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 November 23, 1987 in Afghanistan. The applicant was admitted to the United States as a lawful permanent resident on November 29, 1989, when he was two years old. The applicant's parents, [REDACTED] were married on June 1, 1980. The applicant's father became a U.S. citizen upon his naturalization on June 9, 1996. The applicant's mother naturalized on September 23, 1996. The applicant seeks a certificate of citizenship claiming that he 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 did not lawfully obtain permanent residence and therefore was not eligible for a certificate of citizenship under section 320 of the Act. The director noted that the applicant had listed [REDACTED] as his father at the time of his entry, asylum processing and status adjustment.

On appeal, the applicant, through counsel, maintains that the director erred in denying his citizenship application. See Statement on Form I-290B, Notice of Appeal to the AAO. Counsel states that the applicant is the son of [REDACTED] and that he automatically acquired U.S. citizenship pursuant section 320 of the Act. See Appeal Brief. Counsel further states that the applicant's citizenship application cannot be denied when his lawful permanent residence has not been cancelled or rescinded. *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 1987. He was under 18 years old on the effective date of the CCA, 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 therefore applicable to this 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 on November 29, 1989. The applicant obtained his lawful permanent resident claiming to be the child of [REDACTED]

[REDACTED] DNA evidence confirms that [REDACTED] Sayed are the applicant's biological parents. Nevertheless, the applicant's lawful permanent residence was obtained illegally or in error, and is therefore void *ab initio*. See *Gallimore v. Att'y Gen.*, 619 F.3d 216, 223 (3d Cir. 2010)(citing *Matter of Kaloamatangi*, 23 I.&N. Dec. 548, 551 (BIA 2003)). Unlike the cases cited by counsel, involving a discretionary determination following an erroneous grant of status, the applicant is now seeking U.S. citizenship. "There 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). Moreover, there is no requirement that the error or illegality in obtaining lawful permanent resident be intentional. *Gallimore, supra* at 223-24; see also *Koloamatangi, supra* at 550 (stating that "the term lawfully admitted for permanent residence does not apply to aliens who had obtained their permanent resident status by fraud, or had otherwise not been entitled to it"). The applicant cannot demonstrate that he is a lawful permanent resident, as defined in section 101(a) of the Act, 8 U.S.C. § 1101(a), and therefore cannot establish eligibility for U.S. citizenship under section 320 of the Act.

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 his burden and his appeal will be dismissed.

ORDER: The appeal is dismissed.