

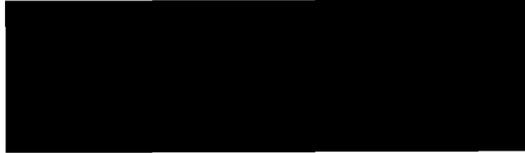
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave. N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



E2

Date: **SEP 28 2011**

Office: NEW YORK, NEW YORK

FILE



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.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded to the director for further action consistent with this decision.

The record reflects that the applicant was born in the Philippines on [REDACTED] 1991, to unmarried parents [REDACTED] and [REDACTED]. The applicant's father became a U.S. citizen upon his naturalization on May 25, 2000. The applicant's mother is not a citizen of the United States. On April 4, 2008, the applicant was admitted to the United States as a lawful permanent resident. The applicant seeks a Certificate of Citizenship claiming that she acquired U.S. citizenship from her father pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The director determined that the applicant failed to establish that she was legitimated by her father, and denied the application accordingly. *See Decision of the Director*, dated May 4, 2010. On appeal, the applicant's father requests review of the denial claiming that the documentation he submitted in support of his Petition for Alien Relative (Form I-130) on the applicant's behalf, established a genuine father-daughter relationship. *See Form I-290B, Notice of Appeal*, filed May 25, 2010.

Section 320 of the Act, as amended by the Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631 (CCA), applies to this appeal because the applicant was not yet 18 years old as of the February 27, 2001 effective date of the CCA. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153, 156 (BIA 2001) (en banc). Section 320(a) of the Act, 8 U.S.C. § 1431(a), provides:

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 regulations define the term "legal custody" to refer to "the responsibility for and authority over a child." 8 C.F.R. § 320.1. Additionally,

For the purpose of the CCA, the Service will presume that a U.S. citizen parent has legal custody of a child, and will recognize that U.S. citizen parent as having lawful authority over the child, absent evidence to the contrary, in the case of . . . a biological child born out of wedlock who has been legitimated and currently resides with the natural parent.

Id. Further, for naturalization and citizenship purposes, the term "child" means:

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. . . if such legitimation . . . takes place before the child reaches the age of 16 years . . . and the child is in the legal custody of the legitimating . . . parent or parents at the time of such legitimation

Section 101(c) of the Act, 8 U.S.C. § 1101(c)(1).

Accordingly, to meet the definition of "child" for citizenship purposes under section 101(c) of the Act, the applicant must establish, among other things, that she was legitimated before her sixteenth birthday on December 3, 2007. The definition of "child" in section 101(b)(1)(D) of the Act, 8 U.S.C. § 1101(b)(1)(D), which includes a child born out of wedlock "if the father has or had a bona fide parent-child relationship with the person," is not applicable to naturalization and citizenship claims under title III of the Act.

Here, the applicant has not established that she has been legitimated under the laws of the Philippines or New York. First, under the 1950 Civil Code of Philippines, "to effect the legitimation of a child born out of wedlock the following primary conditions must be met: (1) the child must qualify as a natural child (a child born out of wedlock to parents who were free to marry each other at the time of conception); (2) the child must be acknowledged or recognized by its parents; and (3) the parents of the child must marry one another." *Matter of Espiritu*, 16 I&N Dec. 426, 427-28 (BIA 1977) (internal citation and quotation marks omitted). Second, under New York law, "the legitimation of a child born out of wedlock requires the marriage of the child's natural parents." *Matter of Patrick*, 19 I&N Dec. 726, 728 (BIA 1988). Because the applicant's birth parents never married, she does not meet the definition of legitimated child under section 101(c) of the Act.

The applicant must meet her burden of proof by establishing the claimed citizenship by a preponderance of the evidence. 8 C.F.R. § 320.3. Here, the applicant has not met this burden. Accordingly, the applicant is not eligible for a certificate of citizenship under section 320(a) of the Act, and the appeal will be dismissed. This dismissal is without prejudice to the future filing of an Application for Naturalization (Form N-400).

The AAO notes that the record contains a copy of the applicant's U.S. passport, which was issued by the U.S. Department of State, Passport Office, on December 2, 2009. In *Matter of Villanueva*, 19 I&N Dec. 101, 103 (BIA 1984), the Board held that a valid U.S. passport is conclusive proof of U.S. citizenship. Specifically, the Board held that:

unless void on its face, a valid United States passport issued to an individual as a citizen of the United States is not subject to collateral attack in administrative immigration proceedings but constitutes conclusive proof of such person's United States citizenship.

Id. Where, as here, the applicant has failed to establish statutory eligibility for U.S. citizenship, a Certificate of Citizenship cannot be issued. The U.S. Citizenship and Immigration Service's (USCIS) Adjudicator's Field Manual at § 71.1(e)(1) states:

An unexpired United States passport issued for 5 or 10 years is now considered prima facie evidence of U.S. citizenship. Because it does not provide the actual basis upon which citizenship was acquired or derived, the submission of additional documentation may be required or the passport file may be requested. If after review there are differences or discrepancies between the USCIS information and the Passport Office records which would indicate that the application should not be approved, no action should be taken until the Passport Office has an opportunity to review and decide whether to revoke the passport.

The matter must therefore be remanded to the director to request that the Passport Office review and decide whether to revoke the applicant's passport. The director shall issue a new decision once the Passport Office's review is completed and, if adverse to the applicant, shall certify the decision to the AAO for review.

ORDER: The matter is remanded to the director for action consistent with this decision and for issuance of a new decision, which, if adverse to the applicant, shall be certified to the Administrative Appeals Office for review.