

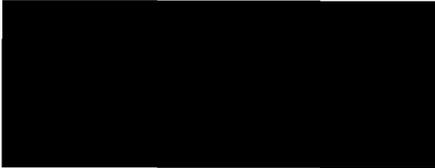
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



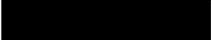
**U.S. Citizenship
and Immigration
Services**

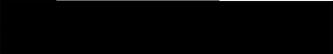


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Date: **APR 24 2012**

Office: PHILADELPHIA, PA

FILE: 

IN RE: Applicant 

APPLICATION: Application for Certificate of Citizenship under Section 320 of the Immigration and Nationality Act; 8 U.S.C. § 1431 (2001).

ON BEHALF OF APPLICANT:

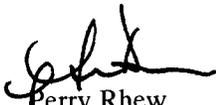
SELF-REPRESENTED

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, Philadelphia, Pennsylvania. The matter came before the Administrative Appeals Office (AAO) on appeal. The appeal was dismissed. The applicant filed a motion to reopen or reconsider. The applicant's motion will be granted and the prior decision of the AAO will be affirmed.

The record reflects that the applicant was born on June 6, 1985 in the Dominican Republic. His parents, [REDACTED] were not married to each other. The applicant's parents are not U.S. citizens. The applicant's mother married [REDACTED] the applicant's step-father, in 1991. The applicant's step-father became a U.S. citizen upon his naturalization on October 27, 1994. The applicant was admitted to the United States as a lawful permanent resident on January 24, 2000. The applicant sought a certificate of citizenship claiming that he automatically acquired U.S. citizenship through his step-father.

The field office director determined that the applicant did not acquire U.S. citizenship under section 320 of the Act because he had failed to establish that he was adopted by his step-father. The AAO dismissed the applicant's appeal finding that the applicant had not submitted evidence of a full, final and complete adoption and therefore did not acquire U.S. citizenship through his step-father.

The applicant's now seeks reopening and reconsideration. In support of his motion, the applicant submits a copy of a custody affidavit executed by his biological father ceding custody of the applicant to his mother and step-father.

The applicant's submission meets the regulatory requirements of a motion to reopen. *See* 8 C.F.R. § 103.5(a)(2). The motion is therefore granted. However, for the reasons stated below, the AAO's previous decision will be affirmed.

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). As noted in the AAO's November 3, 2011 decision, section 320 of the Act, 8 U.S.C. § 1431, 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 this case.

Section 320 of the Act states in pertinent part:

- (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 parent if the child satisfies the requirements applicable to adopted children under section 101(b)(1).

Section 101(b)(1) of the Act 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: Provided, That no natural parent of any such adopted child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act; or

...

(ii) subject to the same provisos as in clause (i), a child who:

(III) is otherwise described in clause (i), except that the child was adopted while under the age of 18 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 1151(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 . . . ; or,

...

(ii) subject to the same provisos as in clause (i), a child who:

(III) is otherwise described in clause (i), except that the child is under the age of 18 at the time a petition is filed in his or her behalf to accord a classification as an immediate relative under section 201(b);

...

Section 101(c) of the Act states that:

(1) 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, and, except as otherwise provided in sections 320, and 321 of 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 (except to the extent that the child is described in subparagraph (E)(ii) or (F)(ii) of subsection (b)(1)), and the child is in the legal custody of the legitimating or adopting parent or parents at the time of such legitimation or adoption.

In contrast to section 101(b) of the Act, the definition of “child” for Title III purposes found in section 101(c) of the Act does not include a “step-child.”

As noted in the AAO’s November 3, 2011 decision, there is no evidence in the record establishing that the applicant’s step-father adopted the applicant or that the applicant otherwise satisfies the requirements of section 101(b)(1) of the Act. The custody affidavit submitted by the applicant with the instant motion does not establish that the applicant was adopted as the term is defined in the regulations.¹ The applicant has not submitted any evidence of a full, final and complete adoption. Neither section 320 nor any other provision of the Act provides for derivation or acquisition of U.S. citizenship through a step-father. The applicant did not acquire U.S. citizenship because he is not the adopted child of his step-father.

The applicant cannot establish his eligibility for a certificate of citizenship under section 320 or any other provision of the Act. He therefore has not met his burden of proof. His motion is granted, but the AAO’s previous decision dismissing his appeal is affirmed.

ORDER: The motion is granted. The AAO’s November 3, 2011 decision is affirmed. The appeal remains dismissed.

¹ The regulation, at 8 C.F.R. § 320.1, defines “adopted” as

adopted pursuant to a full, final and complete adoption. If a foreign adoption of an orphan was not full and final, [or] was defective ... the child is not considered to have been full, finally and completely adopted and must be readopted in the United States.