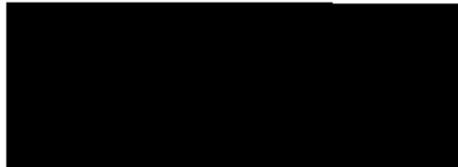


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



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



E₂

Date: **AUG 16 2012**

Office: ST. PAUL, MN

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:



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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630, or a request for a fee waiver. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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, St. Paul, Minnesota, 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 August 21, 1984 in Liberia. The applicant was admitted to the United States as a non-immigrant on February 20, 1986. The applicant's father became a U.S. citizen upon his naturalization on August 14, 2002, when the applicant was 17 years old. The applicant seeks a certificate of citizenship claiming that she acquired U.S. citizenship upon her father's naturalization 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 acquire U.S. citizenship because she had not been admitted to the United States as a lawful permanent resident as is required by 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).

On appeal, the applicant, through counsel, maintains that she was lawfully admitted to the United States and maintained her lawful non-immigrant status. See Statement of the Applicant on Form I-290B, Notice of Appeal to the AAO. In support of the appeal, counsel cites to a regulation defining "lawful admission and maintenance of lawful status for purposes of section 322 of the Act."

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 1984. Section 320 of the Act, as amended by the CCA, is therefore 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 record indicates that the applicant was admitted to the United States as a nonimmigrant visitor in 1986 and has not since been accorded lawful permanent resident status. She therefore did not automatically acquire U.S. citizenship upon her father's naturalization under section 320 of the Act.

Section 320 of the Act, in contrast to section 322 of the Act, requires that the applicant be residing in the United States pursuant to a lawful admission for permanent residence.¹ Section 322 of the Act, on the other hand, requires that the applicant be residing abroad and be temporarily present in the United States pursuant to a lawful admission. The applicant is currently residing in the United States and is not seeking U.S. citizenship pursuant to section 322 of the Act. Her residence in the United States, as well as her age, preclude eligibility for U.S. citizenship under section 322 of the Act.

The applicant did not automatically acquire U.S. citizenship under section 320 of the Act, or any other provision of law. She 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). Because the applicant has failed to demonstrate her eligibility for citizenship under section 320 or any other provision of the Act, her appeal will be dismissed.

ORDER: The appeal is dismissed.

¹ Section 322 of the Act, 8 U.S.C. § 1433, provides that:

(a) A parent who is a citizen of the United States may apply for naturalization on behalf of a child born outside of the United States who has not acquired citizenship automatically under section 320. The Attorney General shall issue a certificate of citizenship to such applicant upon proof, to the satisfaction of the Attorney General, that the following conditions have been fulfilled:

- (1) At least one parent is a citizen of the United States, whether by birth or naturalization.
- (2) The United States citizen parent--
 - (A) has been 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; or
 - (B) has a citizen parent who has been 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.
- (3) The child is under the age of eighteen years.
- (4) The child is residing outside of the United States in the legal and physical custody of the applicant [citizen parent] (or, if the citizen parent is deceased, an individual who does not object to the application).
- (5) The child is temporarily present in the United States pursuant to a lawful admission, and is maintaining such lawful status.