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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

Date: MAY 0 9 2012 Office: SACRAMENTO, 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:

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 $585. 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. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on 1998 in the Philippines. The applicant's parents are and The applicant's parents were married in the Philippines in 1992. The applicant was admitted to the United States as a lawful permanent resident on September 21, 2010. She presently seeks a certificate of citizenship pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431, claiming that she acquired U.S. citizenship from her father.

The field office director determined that the applicant's father was not residing with the applicant when the application was filed and denied the application accordingly.

On appeal, the applicant's father maintains that he has been residing with the applicant since October 10, 2011. *See* Statement of the Applicant on Form I-290B, Notice of Appeal to the AAO. The appeal is accompanied by a copy of the applicant's father's California identification card and a confirmation letter from the U.S. Postal Service indicating that the applicant's father's mail would be forwarded beginning on October 12, 2011.

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). 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 applicable to this case.

Section 320 of the Act, as amended, states 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 regulation requires that the applicant establish eligibility for the benefit sought at the time of filing the application. 8 C.F.R. § 103.2(b)(1). An application may not be approved at a future date after the applicant becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978). The record clearly indicates that the applicant's father was residing

in New Jersey, and not in California with the applicant, at the time of filing of this application on June 29, 2011. The applicant therefore was ineligible for a certificate of citizenship under section 320 of the Act as of the date of filing of her application.

Section 320 of the Act, however, provides for automatic acquisition of U.S. citizenship. The applicant's ineligibility for a certificate of citizenship on June 29, 2011 does not impede her from establishing that she has automatically acquired U.S. citizenship should she be able to establish that she is now residing in her father's physical and legal custody. The evidence in the record, however, does not establish that her father is residing with the applicant in California. The documents submitted, which include the California identification card and U.S. Postal Service confirmation, suggest that the applicant's father was in California in October 2011 but do not demonstrate that he is residing with the applicant at in Elk Grove. The Act defines the term "residence" as "the place of general abode . . . [the] principal, actual dwelling place in fact, without regard to intent." Section 101(a)(33) of the Act, 8 U.S.C. § 1101(a)(33). The evidence in the record does not establish that the address is the applicant's father's principal, actual dwelling place in fact.

"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). The burden of proof is on the applicant to establish her claimed citizenship by a preponderance of the evidence. 8 C.F.R. §§ 320.3(b)(1) and 341.2(c). The applicant has not met her burden of proof, and her appeal will be dismissed.

ORDER: The appeal is dismissed.