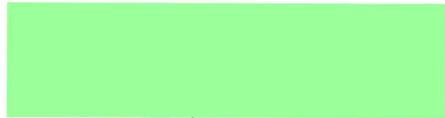


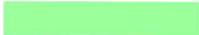


U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **APR 10 2013** Office: LOUISVILLE, KY

FILE: 

IN RE: Applicant: 

APPLICATION: Application for Certificate of Citizenship under former Section 320 of the Immigration and Nationality Act; 8 U.S.C. §1431 (1962)

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.


Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Louisville, Kentucky, 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 [REDACTED] in Bermuda. The applicant's father, [REDACTED] was born in the United States. The applicant's mother became a U.S. citizen upon her naturalization on January 25, 1954, when the applicant was 9 years old. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship upon his mother's naturalization pursuant to former section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431, as in effect at the time of his eighteenth birthday.

The field office director denied the application, finding that the applicant did not acquire U.S. citizenship because there was no evidence to establish that he had been admitted to the United States as a lawful permanent resident as is statutorily required. The director also found that the applicant did not acquire U.S. citizenship at birth through his U.S. citizen father, because his father was not physically present in the United States for the statutorily required period of time prior to the applicant's birth.¹

On appeal, the applicant, through counsel, maintains that he entered the United States as a lawful permanent resident with his mother. The applicant cites to a passenger list and a tax register indicating that the applicant's mother arrived in the United States in 1946 with an infant child. The applicant also submitted evidence to establish that his mother was a lawful permanent resident of the United States prior to her naturalization. The applicant claims that he has submitted sufficient evidence to establish that he was admitted as a lawful permanent resident and thus derived U.S. citizenship upon his mother's naturalization. See Appeal Brief.

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 1944. Former section 320 of the Act, as in effect when the applicant turned eighteen years old in 1962, and before the enactment of the Child Citizenship Act of 2000 (the CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), is therefore applicable to his case.

Former section 320 of the Act provided, in pertinent part, that

- (a) A child born outside of the United States . . . shall, if [his] alien parent is naturalized, become a citizen of the United States, when -

¹ The AAO notes that the director mistakenly cited section 301(g) of the Act, 8 U.S.C. § 1401(g), even though the Act was not enacted until 1953. Section 201(g) of the Nationality Act, 8 U.S.C. § 601(g), was in effect at the time of the applicant's birth and is therefore applicable to this case. The Nationality Act, however, required a similar period of residence in the United States prior to the applicant's birth, a requirement that the applicant's father could not fulfill.

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- (1) such naturalization takes place while such child is under the age of eighteen years; and
- (2) such child is residing in the United States pursuant to a lawful admission for permanent residence at the time of naturalization or thereafter and begins to reside permanently in the United States while under the age of eighteen years.

* * *

The record does not contain evidence of the applicant's admission to the United States as a lawful permanent resident. The documents submitted by the applicant relate to his mother's status and, although they may reference his admission as her infant child, they do not establish, by a preponderance of the evidence, that he adjusted his status to that of a lawfully admitted permanent resident of the United States prior to her naturalization or at any other time thereafter. A diligent search of USCIS records returned no evidence of admission as a lawful permanent resident. The applicant therefore did not automatically acquire U.S. citizenship upon his mother's naturalization under former section 320 of the Act.

The applicant did not automatically acquire U.S. citizenship under section 320 of the Act, or any other provision of law. He 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 his eligibility for citizenship under section 320 or any other provision of the Act, his appeal will be dismissed.

ORDER: The appeal is dismissed.