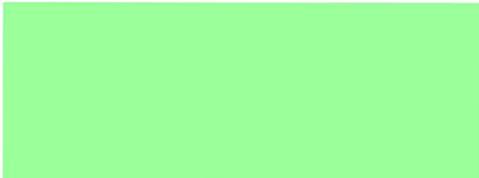




U.S. Citizenship
and Immigration
Services

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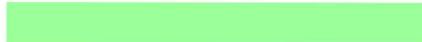


Date: **FEB 25 2013**

Office: ST. ALBANS, VT

FILE: 

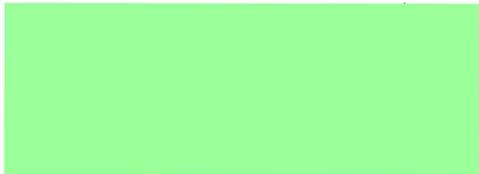
IN RE:

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:

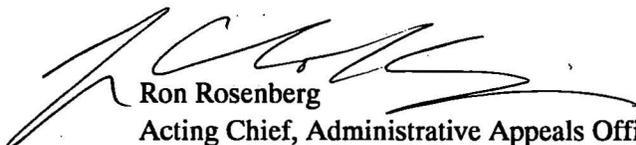


INSTRUCTIONS:

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,


Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Saint Albans, Vermont Field Office Director (the director) denied the Application for Certificate of Citizenship (Form N-600) and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The application will remain denied.

Pertinent Facts and Procedural History

The applicant seeks a certificate of citizenship pursuant to section 320(a) of the Act, 8 U.S.C. § 1431, claiming that he acquired U.S. citizenship from his mother, a naturalized U.S. citizen.

The applicant was born out-of-wedlock in Jamaica on June 25, 1987. He became a lawful permanent resident of the United States on October 7, 1999 when he was twelve years old. His mother became a naturalized U.S. citizen on October 21, 2005 when the applicant was eighteen years old.

The applicant filed his Form N-600 on July 31, 2012. The director determined that the applicant was ineligible for a certificate of citizenship because he was over the age of eighteen when his mother naturalized. On appeal, counsel contends that the applicant is entitled to a certificate of citizenship because U.S. Citizenship and Immigration Services (USCIS) unduly delayed his mother's naturalization process. Counsel claims that the provisions of the Child Status Protection Act (CSPA), Pub. Law No. 107-208, 116 Stat. 927 (Aug. 6, 2002) apply to the adjudication of this application.

Applicable Law

The AAO conducts appellate review on a de novo basis. *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). 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), provides for automatic acquisition of U.S. citizenship upon the fulfillment of certain conditions prior to a child's eighteenth birthday. The CCA, which took effect on February 27, 2001, is not retroactive, and applies only to persons who were not yet 18 years old as of February 27, 2001. Because the applicant was under the age of 18 on February 27, 2001, he is eligible for the benefits of the amended Act. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001).

Section 320 of the Act, as amended, states 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.

(b)(6)

- (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).

Analysis

The evidence of record fails to demonstrate that the applicant is eligible for a certificate of citizenship because he does not satisfy section 320(a)(2) of the Act, which requires the U.S. citizen parent's naturalization to occur prior to the child's eighteenth birthday. While the applicant's mother submitted her naturalization application (Form N-400) to USCIS when the applicant was seventeen years old, she did not become a U.S. citizen until after the applicant turned eighteen.¹

Counsel attributes the applicant's inability to satisfy section 320(a)(2) of the Act to USCIS delays in the processing of the applicant's mother's naturalization, and asserts that the applicant's age for acquisition of U.S. citizenship purposes under section 320(a) of the Act is protected by the CSPA provisions. Counsel's contentions are misguided. The CSPA, as codified at section 201(f) of the Act, 8 U.S.C. § 1151, applies to beneficiaries of petitions submitted under section 204 of the Act, 8 U.S.C. § 1154. There are no corresponding "age-out" provisions under section 320 of the Act and USCIS has no discretion to waive the requirements of the statute. As noted by the U.S. Supreme Court: "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).

Conclusion

The applicant bears the burden of proof to establish the claimed citizenship by a preponderance of the evidence. Section 341 of the Act, 8 U.S.C. § 1452; 8 C.F.R. § 341.2(c). Here, the applicant has not met his burden and did not acquire citizenship under section 320(a) of the Act through the naturalization of his mother.

ORDER: The appeal is dismissed. The application remains denied.

¹ Although not raised by counsel, we note that the applicant also is ineligible for a certificate of citizenship through his U.S. citizen stepfather, as the record contains no evidence that the applicant was adopted by him. See *Matter of Guzman-Gomez*, 24 I&N Dec. 824 (BIA 2009) (stating that a person born outside of the United States cannot derive U.S. citizenship under section 320(a) of the Act by virtue of his or her relationship to a nonadoptive stepparent).