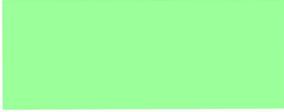




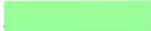
**U.S. Citizenship
and Immigration
Services**

(b)(6)



Date: **MAR 19 2013**

Office: LOS ANGELES, CA

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:

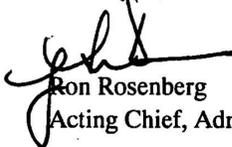


INSTRUCTIONS:

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 application was denied by the Field Office Director, Los Angeles, California, 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 Romania. The applicant was admitted to the United States as an asylee on November 1, 1993. His mother became a U.S. citizen upon her naturalization on March 10, 1999. The applicant's father's citizenship is unknown. The applicant's parents were divorced in 1991. The applicant was admitted to the United States as a lawful permanent resident, based on an alien relative petition filed by his mother, on September 21, 2004. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship through his mother.

The field office director denied the application finding that the applicant did not acquire U.S. citizenship because he had not been admitted to the United States as a lawful permanent resident prior to his eighteenth birthday as is required by section 320 of the Immigration and Nationality Act (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). The director rejected the applicant's argument that his date of lawful permanent resident admission should roll back pursuant to the regulation at 8 C.F.R. 209.2(f) finding that the regulation does not apply to the applicant's case.

On appeal, the applicant, through counsel, reiterates that his date of admission as a lawful permanent resident to the United States should roll back in accordance with 8 C.F.R. 209.2(f). See Appeal Brief. Alternatively, counsel maintains that former section 321 of the Act, 8 U.S.C. 1432 (repealed), only required that the applicant begin residing permanently in the United States prior to his eighteenth birthday.

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 1986. Section 320 of the Act, as amended by the CCA, is therefore applicable to his case.¹

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.

¹ Former section 321 of the Act was repealed by the CCA and it is inapplicable to this case. The AAO therefore finds it unnecessary to address counsel's arguments regarding the residency requirement in former section 321 of the Act.

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- (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 lawful permanent resident six months after his eighteenth birthday. He therefore did not automatically acquire U.S. citizenship upon his mother's naturalization under section 320 of the Act.

Counsel maintains that, pursuant to the regulation at 8 C.F.R. 209.2(f), his date of admission as a lawful permanent resident must roll back due to his asylee admission. The regulation at 8 C.F.R. 209.2(f), requires that the date of admission be recorded "as of the date one year before the date of approval of the application." The regulation refers to "the application" and, in so doing, specifically limits its applicability to asylee adjustment applications filed under section 209 of the Act. The applicant did not obtain lawful permanent residence on the basis of an asylee adjustment application. Rather, the applicant was the beneficiary of an alien relative petition (Form I-130) filed pursuant to section 204(a)(1)(A)(i) of the Act. The regulation is therefore inapplicable to his case and his date of admission for lawful permanent residence does not roll back one year to a date prior to his eighteenth birthday.

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.