



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: **OCT 04 2013**

OFFICE: BLOOMINGTON, MN

FILE: [Redacted]

IN RE:

[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:

[Redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Form N-600, Application for Certificate of Citizenship (Form N-600) was denied by the Field Office Director, Bloomington, Minnesota (the director), and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant was born in Kenya on October 6, 1990 to unmarried parents. The record indicates that the applicant's parents subsequently married in 1994, and divorced on January 12, 2005. The applicant's father became a naturalized U.S. citizen on May 18, 2005, and her mother became a naturalized U.S. citizen on July 13, 2005, when the applicant was 14 years old. The applicant was paroled into the United States pursuant to section 212(d)(5) of the Act, 8 U.S.C. § 1182(d)(5), for humanitarian and family reunification reasons. She was last paroled into the country on May 7, 2004. The applicant seeks a certificate of citizenship pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431, based on the claim that she derived U.S. citizenship through her U.S. citizen parents.

In a decision dated May 2, 2013, the director determined that the applicant had failed to establish that she resided in the United States pursuant to a lawful admission for permanent residence prior to turning 18, as required by section 320 of the Act. The application was denied accordingly.

Counsel for the applicant asserts, on appeal, that the applicant made a lawful entry into the United States prior to her 18th birthday, and that she therefore meets the lawful permanent residence requirements contained in section 320 of the Act. Counsel asserts further that the applicant was eligible for adjustment of status to that of a lawful permanent resident prior to her 18th birthday, because her father made a good-faith effort to file a Form I-130, Petition for Alien Relative (Form I-130) on her behalf before she turned 18, and her adjustment of status application should be related back to the initial Form I-130 filing date. No supporting evidence is submitted on appeal.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d. Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

To the extent that counsel is trying to appeal the denial of the applicant's adjustment of status application, the AAO notes that it does not have appellate jurisdiction over such an appeal from the denial of an application for adjustment of status.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 The authority to adjudicate appeals is delegated to the AAO by the Secretary of the Department of Homeland Security (DHS) pursuant to the authority vested in him through the Homeland Security Act of 2002, Pub. L. 107-296. See DHS Delegation Number 0150.1 (effective March 1, 2003); see also 8 C.F.R. § 2.1 (2003). The AAO exercises appellate jurisdiction over the matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003).

- (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.

Section 101(a)(20) of the Act, 8 U.S.C. § 1101(a)(20) defines the term, “lawfully admitted for permanent residence” as, “[t]he status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed.”

In the present matter, the record contains no evidence demonstrating that the applicant has been lawfully admitted into the United States for permanent residence. The record reflects instead that the applicant was paroled into the United States pursuant to section 212(d)(5) of the Act, for humanitarian and family reunification reasons.

Section 212(d)(5) of the Act provides, in pertinent part, that:

The [Secretary] may . . . in his discretion parole into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission to the United States, but such parole of such alien shall not be regarded as an admission of the alien and when the purposes of such parole shall, in the opinion of the [Secretary] have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.

The applicant’s paroled entry into the United States pursuant to section 212(d)(5) of the Act, therefore did not constitute a lawful admission for permanent residence so as to qualify her for derivative citizenship under the provisions of former section 320 of the Act.

The regulation at 8 C.F.R. § 341.2(c) states that the burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. The applicant has not met her burden of proof in the present matter. The appeal shall therefore be dismissed.

ORDER: The appeal is dismissed.