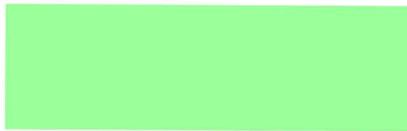




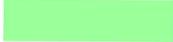
U.S. Citizenship  
and Immigration  
Services

(b)(6)

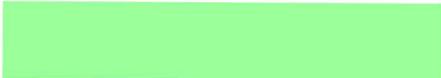


Date: **OCT 10 2013**

Office: SAN FRANCISCO, CA

FILE: 

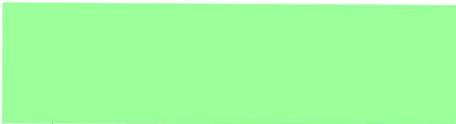
IN RE:

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 (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.

Thank you,

Ron Rosenberg  
Chief, Administrative Appeals Office

(b)(6)

**DISCUSSION:** The application was denied by the Field Office Director (the director), San Francisco, California, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded for action consistent with this decision.

The record indicates that the applicant was born on September 17, 1988 in India. The applicant maintains that his date of birth is August 17, 1988. His parents, [REDACTED] and [REDACTED] were married in 1986 and divorced in 2002. The applicant's mother became a U.S. citizen upon her naturalization on November 22, 1994. The applicant's father naturalized on July 31, 1990. The applicant was admitted to the United States as lawful permanent resident August 15, 1990. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship pursuant to 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 field office director denied the application finding, *inter alia*, that the applicant could not establish his true identity given his claim that he was born on August 17, 1988, rather than September 17, 1988 as indicated in his immigration file. The director found that the applicant could not demonstrate that he obtained lawful permanent residence such that he could automatically acquire U.S. citizenship pursuant to section 320 of the Act.

On appeal, the applicant submits, in part, a copy of his U.S. passport application, a letter from a doctor present at the applicant's birth, school and social security records, and an appeal brief. The applicant maintains that he acquired U.S. citizenship pursuant to section 320 of the Act. He states that the September 17, 1988 date of birth was listed in error, and that his true date of birth is August 17, 1988. He further states that his biological relationship to a U.S. citizen parent was established by the DNA test results he submitted. Lastly, he explains the circumstances surrounding his name change.

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 (9<sup>th</sup> Cir. 2005). The applicant was under 18 years of age on the effective date of the CCA, February 27, 2001. Thus, section 320 of the Act, as amended by the CCA, is applicable to his case.

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.

- (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 contains a copy of the applicant's valid U.S. passport. The applicant's U.S. passport, however, lists the applicant's date of birth as August 17, 1988. As noted above, the applicant's immigration record indicates that his date of birth is September 17, 1988. The September 17, 1988 date of birth was verified by the [REDACTED] District Registrar of Birth & Deaths at the behest of the U.S. Embassy.

In *Matter of Villanueva*, 19 I&N Dec. 101 (BIA 1984), the Board of Immigration Appeals (Board) held that a valid U.S. passport is conclusive proof of U.S. citizenship. Specifically, *Matter of Villanueva* stated at 102-104 that:

Prior to enactment of 22 U.S.C. 2705, a United States passport was regarded only as prima facie evidence of United States citizenship. Now, however, United States passports are given the same weight for proof of United States citizenship as certificates of naturalization or citizenship.

Accordingly, we hold that unless void on its face, a valid United States passport issued to an individual as a citizen of the United States is not subject to collateral attack in administrative immigration proceedings but constitutes conclusive proof of such person's United States citizenship.

22 U.S.C. § 2705 states, in pertinent part, that:

The following documents shall have the same force and effect as proof of United States citizenship as certificates of naturalization or of citizenship issued by the Attorney General [now, Secretary, Department of Homeland Security] or by a court having naturalization jurisdiction:

- (1) A passport, during its period of validity (if such period is the maximum period authorized by law), issued by the Secretary of State to a citizen of the United States.

Where, as here, the information in the applicant's U.S. passport differs from the applicant's immigration file, the Passport Office must be provided an opportunity to review the noted discrepancies. The matter must therefore be remanded to the director to request that the Passport Office review and determine the applicant's correct date of birth. Once the issue of the applicant's date of birth is resolved, the director shall further consider whether the applicant was in his mother's legal and physical custody upon his parents' divorce before issuing a new

decision.<sup>1</sup> The director shall then issue a new decision which, if adverse to the applicant, shall be certified to the AAO for review.

**ORDER:** The director's decision is withdrawn. The matter is remanded to the director for action consistent with this decision.

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<sup>1</sup> The applicant's parents' divorce decree does not contain a custody order such that legal custody of the applicant could be presumed under the regulations at 8 C.F.R. §320.1.