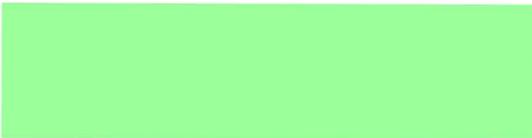




**U.S. Citizenship
and Immigration
Services**

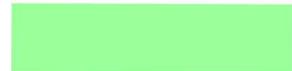
(b)(6)



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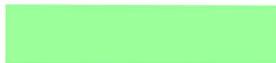
SEP 17 2013

Office: SAN JOSE, CA



IN RE:

Applicant:



APPLICATION:

Application for Certificate of Citizenship under Section 301 of the Immigration and Nationality Act; 8 U.S.C. § 1401 (2003).

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,

A handwritten signature in black ink, appearing to read "D. Sturgis" or similar, written over a circular stamp or mark.

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, San Jose, California, and is now before the Administrative Appeals Office (AAO) on appeal. The director's decision shall be withdrawn and the matter remanded for entry of a new decision.

The record reflects that the applicant was born on June 27, 2003 in China. His father, [REDACTED] became a U.S. citizen upon his naturalization on December 6, 1989. The applicant's parents were married in 1997 in China. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship through his father.

The field office director denied the applicant's Form N-600, Application for Certificate of Citizenship, upon finding that he could not establish that both his parents naturalized as required by former section 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432. The director further found that the applicant did not automatically acquire U.S. citizenship pursuant to section 320 of the Act, as amended by the Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), because he was not admitted to the United States as a lawful permanent resident.

On appeal, the applicant states that he acquired U.S. citizenship at birth under section 301(g) of the Act, 8 U.S.C. § 1401(g). *See* Statement of the Applicant on Form I-290B, Notice of Appeal to the AAO.

The AAO reviews these proceedings *de novo*. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The applicable law for transmitting citizenship to a child born abroad when one parent is a U.S. citizen is the statute that was in effect at the time of the child's birth. *See Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1028 n.3 (9th Cir. 2001) (internal citation omitted). The applicant in the present matter was born in 2003. Former section 321 of the Act was repealed by the CCA in 2001, and therefore is inapplicable to this case. As noted by the director, the applicant was not admitted to the United States as a lawful permanent resident, so section 320 of the Act, as amended by the CCA, is also inapplicable in this case. The director, however, did not consider whether the applicant derived U.S. citizenship at birth pursuant to section 301(g) of the Act.

Section 301(g) of the Act stated, in pertinent part, that the following shall be nationals and citizens of the United States at birth:

[A] person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years

As the director only considered the applicant's eligibility for U.S. citizenship under former section 321 and section 320 of the Act, his decision must be withdrawn and the matter remanded for entry of a new decision. Upon remand, the director must provide the applicant an opportunity to submit evidence that he fulfilled the requirements of section 301(g) of the Act

before entering a new decision into the record. If the applicant is found ineligible for citizenship under section 301(g) of the Act, the director shall certify his decision to the AAO for review.

ORDER: The director's decision is withdrawn and the matter remanded for entry of a new decision, which if adverse to the applicant, shall be certified to the AAO for review.