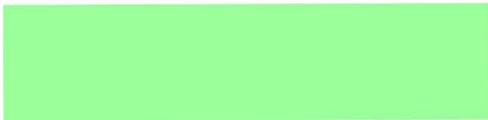




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: SEP 26 2013

OFFICE: HOUSTON, TX

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:

SELF-REPRESENTED

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 "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

(b)(6)

DISCUSSION: The Form N-600, Application for Certificate of Citizenship (Form N-600) was denied by the Field Office Director, Houston, Texas (the director), and the matter is now before the Administrative Appeals Office (AAO) on appeal. The matter shall be remanded to the director for further proceedings consistent with this decision and entry of a new decision.

The record reflects that the applicant was born to unmarried parents in Argentina on September 5, 1984. The applicant's father was born in the United States, and is a U.S. citizen. The applicant's mother is not a U.S. citizen. On November 25, 1984, the applicant was admitted into the United States as a lawful permanent resident. The applicant presently seeks a certificate of citizenship based on the claim that he derived U.S. citizenship through his father, pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. §1431.

In a decision dated January 24, 2013, the director denied the applicant's Form N-600 pursuant to former section 301(a)(7) of the Immigration and Nationality Act (the former Act), 8 U.S.C. § 1401(a)(7), because the applicant failed to establish that his father was physically present in the United States for at least 10 years prior to the applicant's birth, at least five years of which were after his father turned 14, as required under section 301(a)(7) of the former Act.¹

On appeal, the applicant indicates that he was a lawful permanent resident and under the age of 18 when section 320 of the Act went into effect, and that he therefore derived U.S. citizenship under section 320 of the Act.

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.

Former section 320 of the Act was amended by the Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631 (CCA), and took effect on February 27, 2001. The CCA benefits all persons who did not reach their eighteenth birthday as of February 27, 2001. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153, 156 (BIA 2001) (en banc). The applicant in the present matter was 16 years old on February 27, 2001. Section 320 of the Act provisions therefore apply to his citizenship claim.

¹ Section 301(a)(7) of the former Act provided in pertinent part, that the following shall be 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 ten years, at least five of which were after attaining the age of fourteen years[.]

Section 301(a)(7) of the former Act was re-designated as section 301(g) by the Act of October 10, 1978, Pub. L. No. 95-432, 92 Stat. 1046 (1978). The requirements of section 301(a)(7) of the former Act remained the same after the re-designation and until 1986.

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.

As the director failed to consider the applicant's eligibility for U.S. citizenship under 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 with an opportunity to submit evidence that he fulfilled the requirements of section 320 of the Act before entering a new decision into the record. If the applicant is found to be ineligible for citizenship under section 320 of the Act, the director shall certify his decision to the AAO for review.

ORDER: The matter is remanded to the director for further proceedings consistent with this decision and entry of a new decision which, if adverse to the applicant, shall be certified to the AAO for review.