



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: **APR 10 2014**

Office: HONOLULU, HI

IN RE: Applicant:

APPLICATION: Application for Certificate of Citizenship under Former Section 321 of the Immigration and Nationality Act; 8 U.S.C. § 1432 (repealed).

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. 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 Director of the Honolulu, Hawaii District Office (the director) denied the Application for Certificate of Citizenship (Form N-600) and the matter came before the Administrative Appeals Office (AAO) on appeal. The AAO sustained the appeal on May 24, 2013. On February 6, 2014, the AAO withdrew its May 24, 2013, decision and reopened these proceedings. The applicant was then provided an opportunity to submit a brief addressing the jurisdictional issue raised in the AAO's reopening. As the applicant did not submit any brief or additional evidence, the appeal will be dismissed and the application will remain denied.

Pertinent Facts and Procedural History

The applicant was born on March 6, 1975 in South Korea. The applicant's parents are [REDACTED]. The applicant's parents were married in 1980, and divorced in 1991. The applicant was admitted to the United States as a lawful permanent resident on December 26, 1983, when he was 8 years old. The applicant's mother became a U.S. citizen upon her naturalization on June 12, 1990, when the applicant was 15 years old. The applicant seeks a certificate of citizenship claiming that he automatically derived U.S. citizenship through his mother.

The director determined that the applicant did not derive U.S. citizenship under former section 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432 (1989), finding that he was not in his mother's legal custody following his parents' divorce. The applicant subsequently appealed the director's decision to the AAO, and the appeal was sustained.

On February 6, 2014, the AAO withdrew its previous decision and reopened these proceedings. The applicant was provided with 33 days to submit a brief addressing the jurisdictional issue raised in the AAO's reopening. The applicant did not submit any brief or additional evidence.

Applicable Law

Section 341(a) of the Act, 8 U.S.C. § 1452, provides that a person who claims to have derived U.S. citizenship through a qualifying relative may apply to the Attorney General (now the Secretary, Department of Homeland Security) for a certificate of citizenship, and that a certificate may be furnished by the Attorney General if such individual is at the time within the United States.

Analysis

The evidence in the record establishes that the applicant was physically present and residing outside of the United States in Korea when he filed his Form N-600 with U.S. Citizenship and Immigration Services (USCIS). The record contains no evidence that the applicant is currently, or has ever been, physically present in the United States.

A citizenship claim made by an individual physically present outside of the United States is only properly made before the U.S. Department of State (DOS) through a consular officer. *See*

Section 104(a) of the Act, 8 U.S.C. § 1104(a) (providing, in pertinent part, that the “Secretary of State shall be charged with the administration and the enforcement of the provisions of this Act and all other immigration and nationality laws relating to . . . (3) the determination of nationality of a person not in the United States”); *see also* 22 C.F.R. § 50.2 (providing that DOS “[s]hall determine claims to United States nationality when made by persons abroad on the basis of an application for registration, for a passport, or for a Consular Report of Birth Abroad of a Citizen of the United States of America . . .”).

As the record demonstrates that the applicant is physically present in Korea, jurisdiction to adjudicate his claim to U.S. citizenship lies within the U.S. Department of State, and not USCIS. Accordingly, the applicant's Form N-600, Application for Certificate of Citizenship must remain denied.

Conclusion

The applicant retains the burden of proof in these proceedings. *See* Section 341(a) of the Act, 8 U.S.C. § 1452(a); 8 CFR § 341.2(c). Here, that burden has not been met.

ORDER: The appeal is dismissed. The application remains denied.