



U.S. Citizenship  
and Immigration  
Services

(b)(6)

[Redacted]

Date: JAN 15 2014

Office: ST. PAUL, MN

[Redacted]

IN RE:

Applicant:

[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 application was denied by the Field Office Director, St. Paul, Minnesota (the director), and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on July 23, 1995 in Canada. The applicant entered the United States without inspection in March 1997. The applicant's mother and father became U.S. citizens upon their naturalization on September 27, 2000 and October 18, 2000, respectively, when the applicant was five years old. The applicant seeks a certificate of citizenship claiming that she acquired U.S. citizenship upon her parents' naturalization 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 director denied the application finding that the applicant did not acquire U.S. citizenship because she had not been admitted to the United States as a lawful permanent resident as is required by section 320 of the Act.

On appeal, the applicant, through counsel, maintains that the director erred in denying her citizenship claim. See Statement of the Applicant on Form I-290B, Notice of Appeal to the AAO. In support of the appeal, the applicant submits two affidavits purporting to establish that she was inspected when she entered the United States in 1997. The applicant indicates that she wishes to incorporate the denial of her Form I-485, Application to Register Permanent Residence or Adjust Status, into her appeal.

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 born in 1995. Section 320 of the Act, as amended by the CCA, is therefore applicable to her 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 indicates that the applicant is the child of U.S. citizens. However, there is no evidence to establish that she was admitted to the United States as a lawful permanent resident.

The term *lawfully admitted for permanent residence* means, in part: "the 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." 8 C.F.R. § 1.2. The applicant's Form I-485, Application to Register Permanent Residence or Adjust Status, was denied on June 17, 2013.<sup>1</sup> The applicant is, therefore, not "residing in the United States . . . pursuant to a lawful admission for permanent residence" and, therefore, did not automatically acquire U.S. citizenship upon her parents' naturalization under section 320 of the Act.

Section 320 of the Act, in contrast to section 322 of the Act, requires that the applicant be residing in the United States pursuant to a lawful admission for permanent residence.<sup>2</sup> Section 322 of the Act, on the other hand, requires that the applicant be residing abroad with her citizen parent and be temporarily present in the United States pursuant to a lawful admission. The applicant is currently with her parents in the United States and is over the age of 18 years. She is therefore not eligible for U.S. citizenship under section 322 of the Act.

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<sup>1</sup> The applicant incorporates the denial of her adjustment of status application (Form I-485) into her appeal. The jurisdiction of the AAO, however, is limited to the authority specifically granted through the regulations at Volume 8 of the Code of Federal Regulations (8 C.F.R.) section 103.1(f)(3)(iii) (as in effect on Feb. 28, 2003) and subsequent amendments. The regulations do not provide the AAO with jurisdiction to review appeals of denials of adjustment of status applications submitted under sections 245(a) and (i) of the Act.

<sup>2</sup> Section 322 of the Act, 8 U.S.C. § 1433, provides that:

(a) A parent who is a citizen of the United States may apply for naturalization on behalf of a child born outside of the United States who has not acquired citizenship automatically under section 320. The Attorney General shall issue a certificate of citizenship to such applicant upon proof, to the satisfaction of the Attorney General, that the following conditions have been fulfilled:

- (1) At least one parent is a citizen of the United States, whether by birth or naturalization.
- (2) The United States citizen parent--
  - (A) has been 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; or
  - (B) has a citizen parent who has been 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.
- (3) The child is under the age of eighteen years.
- (4) The child is residing outside of the United States in the legal and physical custody of the applicant [citizen parent] (or, if the citizen parent is deceased, an individual who does not object to the application).
- (5) The child is temporarily present in the United States pursuant to a lawful admission, and is maintaining such lawful status.

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*NON-PRECEDENT DECISION*

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The burden of proof is on the applicant to establish her claim to U.S. citizenship by a preponderance of the evidence. 8 C.F.R. § 341.2(c). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.