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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

Date: JAN 2 2 2014 Office: ORLANDO, FL FILE:

IN RE: Applicant:

APPLICATION: Application for Certificate of Citizenship under Sections 301 and 320 of the Immigration and Nationality Act, 8 U.S.C. §§ 1401, 1431 (2013).

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. 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 Orlando, Florida Field Office Director (the director) denied the Application for Certificate of Citizenship (Form N-600) and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the application will remain denied.

Pertinent Facts and Procedural History

The applicant[1] was born on November 15, 1996 in India, and was subsequently adopted by and on January , 2007 in India, when he was ten years old. The applicant states that he entered the United States as a B-2 nonimmigrant visitor on August 19, 2008. On June 16, 2009, the Circuit Court of the Ninth Judicial Circuit in and for Florida issued a final judgment of recognition of the applicant's foreign adoption. The applicant's adoptive mother became a naturalized U.S. citizen on April 23, 2010, when the applicant was thirteen years old, and his adoptive father is a U.S. citizen from birth, having been born in the State of Minnesota. The applicant seeks a certificate of citizenship, on the basis that he acquired U.S. citizenship at birth under section 301 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401.

The director denied the applicant's Form N-600, concluding that his application did not fall within the parameters of section 301 of the Act because he was adopted and not born to U.S. citizen parents. Further, the director found that the applicant failed to establish that he derived U.S. citizenship through his parents under section 320 of the Act, 8 U.S.C. § 1431, because the record did not show that he had been admitted to the United States as a lawful permanent resident as required. The applicant filed the instant timely appeal.

On appeal, the applicant maintains that the director erred in denying his application under section 301 of the Act because the Florida court order recognizing his foreign adoption conferred status on him as the "blood descendant" of his adoptive parents as of his birth. Further, the applicant contends that regardless of his B-2 admission, in actuality he was admitted to the United States as an immigrant, such that he also satisfied the requirements for derivative citizenship through his parents under section 320 of the Act.

Applicable Law

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Because the applicant was born abroad, he is presumed to be an alien and bears the burden of establishing his claim to U.S. citizenship by a preponderance of credible evidence. *See Matter of Baires-Larios*, 24 I&N Dec. 467, 468 (BIA 2008).

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, 1029 n.3 (9th Cir. 2001) (internal quotation marks and

[1] The appeal in this case is filed by the minor applicant's father on the applicant's behalf. The applicant's father's assertions made on appeal and on brief will be referenced as those of the applicant for purposes of this decision.

citation omitted). The applicant in this case was born in 1996. Accordingly, section 301 of the Act controls his claim to acquiring U.S. citizenship at birth.

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

* * *

(c) a person born outside of the United States and its outlying possessions of parents both of whom are citizens of the United States and one of whom has had a residence in the United States or one of its outlying possessions, prior to the birth of such person;

* * *

(g) 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: *Provided*, That any periods of honorable service in the Armed Forces of the United States, or periods of employment with the United States Government . . . may be included in order to satisfy the physical-presence requirement of this paragraph. . . .

* * *

The director also considered the applicant's eligibility for derivative U.S. citizenship through his parents. The applicable law for derivative citizenship purposes is that in effect at the time the critical events giving rise to eligibility occurred. *See Minasyan v. Gonzales*, 401 F.3d 1069, 1075 (9th Cir. 2005); *accord Jordon v. Attorney General*, 424 F.3d 320, 328 (3d Cir. 2005). The Child Citizenship Act of 2000 (CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), effective as of February 27, 2001, amended provisions of sections 320 and 322 of the Act, which apply only to persons who were not yet eighteen years of age on February 27, 2001. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). The applicant was under the age of eighteen on the effective date of the CCA. Thus, section 320 of the Act, as amended, is applicable in this case.

Section 320 of the Act provides:

(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.

(b) Subsection (a) shall apply to a child adopted by a United States citizen parent if the child satisfies the requirements applicable to adopted children under section 101(b)(1).

Acquisition of Citizenship under Section 301 of the Act

Section 301 of the Act allows for the acquisition of U.S. citizenship at birth by children born to U.S. citizens if certain qualifications are satisfied. It does not, however, apply to adopted children, as such children are not "born . . . of" U.S. citizens. *See Marquez-Marquez v. Gonzales*, 455 F.3d 548 (5th Cir. 2006). On appeal, the applicant contends that the Florida judgment recognizing his foreign adoption conferred a blood relationship status between his adoptive parents and him, as of his birth, such that there is no legal distinction between the applicant and any natural born child of the applicant's adoptive parents. Accordingly, he maintains that he qualifies for U.S. citizenship under section 301 of the Act as if he was the natural born child of his citizen parents.

The judgment declaring the applicant to be the legal child and blood descendant of his adoptive parents does not change the underlying facts of the applicant's birth. As noted by the court in *Crider v. Ashcroft*, 74 F. App'x 729, 730 (9th Cir. 2003):

> [C]rider contends that he qualifies under this provision because he was "born outside of the United States" and both of his (later-adopting) parents are citizens. But Crider clearly was not born outside the United States *"of* parents both of whom are citizens." *Id.* Crider was born of parents neither of whom were or are citizens of the United States. He could not have been a citizen "at birth." *Id.* at § 1401. There is no conceivable way to place him within the reach of § 301. *See INS v. Pangilinan,* 486 U.S. 875, 883-84, 108 S.Ct. 2210, 100 L.Ed.2d 882 (1988) (stating that citizenship provisions must be strictly construed).

Similar to *Crider*, the applicant was born to individuals who were not U.S. citizens at the time of his birth. The language of the order declaring the applicant a blood descendant of his adoptive parents does not make him eligible for U.S. citizenship under section 301 of the Act, as a plain reading of the statute does not include a provision for adopted children. With respect to the applicant's claims regarding an apparent violation of the Tenth Amendment, the AAO has no authority to entertain constitutional challenges to a U.S. Citizenship and Immigration Services (USCIS) action. *Cf. Matter of Salazar-Regino*, 23 I&N Dec. 223, 231 (BIA 2002). Accordingly, the applicant, who was adopted by his U.S. citizen parents, did not acquire U.S. citizenship at birth under section 301 of the Act.

Derivation of Citizenship under the Child Citizenship Act of 2000.

The director also considered the applicant's Form N-600 under section 320 of the Act for possible derivation of citizenship through his adoptive parents. The record shows that the applicant satisfies some of the requirements of 320 of the Act. For instance, the applicant's adoptive parents are both

U.S. citizens and he is residing in the legal and physical custody of his citizen parents while he is still under the age of eighteen. However, the applicant has not shown that he is residing in the United States with his adoptive parents after having been admitted as a lawful permanent resident, as required under subsection 320(a)(3) of the Act. Rather, the applicant admits that he entered the United States as a nonimmigrant visitor and failed to maintain such status. The record lacks any evidence that the applicant was subsequently admitted to the United States as a lawful permanent resident.

On appeal, the applicant maintains that his admission to the United States on a visitor's visa should be considered a lawful admission for permanent residence since his intention to immigrate was known at the time of the issuance of his visa and his admission to the United States. He asserts that his adoptive father, a U.S. veteran who was employed overseas, filed a Form I-600, Petition to Classify Orphan as an Immediate Relative, on his behalf, but USCIS mistakenly failed to act on the petition. The applicant states that, at USCIS' recommendation, his adoptive parents' sought and obtained a visitor's visas for him when his adoptive father's employment overseas ended, and that both USCIS and the U.S. Department of State Consulate's Office were aware that the applicant was an intending immigrant. He asserts that his adoptive father filed an orphan petition again in the United States as recommended by the USCIS officer overseas, but it was rejected. Based on these facts, the applicant asserts that his admission to the United States should be considered a lawful admission for permanent residence.

The term "lawfully admitted for permanent residence" is defined at 8 C.F.R. § 1.2, and 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. . . ." The record reflects that the applicant entered the United States as a nonimmigrant visitor and has not been accorded immigrant status. While the AAO acknowledges the difficulties that the applicant and his family have undergone in seeking to regularize the applicant's immigration status, the applicant is not "residing in the United States . . . pursuant to a lawful admission for permanent residence" despite his intent to remain in this country permanently.

The applicant's reference to a number of other regulatory and statutory provisions where there is a presumption of lawful admission for permanent residence, including section 249 of the Act, 8 U.S.C. § 1259, and 8 C.F.R. §§ 101.1, 101.2 and 101.3, are misplaced, as the facts of the applicant's admission do not fall within any of the cited provisions. Accordingly, the applicant does not meet the requirement set forth in subsection 320(a)(3) of the Act, and cannot derive citizenship through his U.S. citizen parents under that provision.

Conclusion

The applicant bears the burden of proof to establish his eligibility for acquisition citizenship by a preponderance of the evidence. Section 341 of the Act, 8 U.S.C. § 1452; 8 C.F.R. § 341.2(c). Here,

the applicant has failed to meet his burden.[2] Accordingly, the applicant is not eligible for a certificate of citizenship under sections 301 and 320 of the Act, and the appeal will be dismissed.

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

[2] The Eleventh Circuit Court of Appeals also determined that the applicant had not demonstrated his eligibility for U.S. citizenship under any provision of the Act, including sections 301 and 320. *Milakovich v. USCIS-Orlando*, 500 F. App'x 873, 876 (11th Cir. 2012) cert. denied, 134 S. Ct. 140 (U.S. 2013).