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

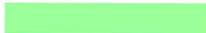


U.S. Citizenship  
and Immigration  
Services

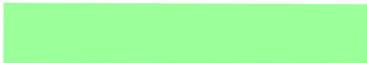


Date: **MAY 15 2014**

Office: NEW YORK, NY

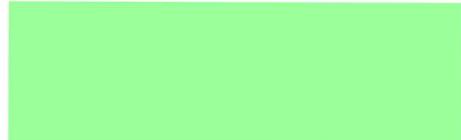
FILE: 

IN RE:

Applicant: 

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

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,

  
Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The New York, New York District 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 The decision of the director will be withdrawn and the appeal will be sustained.

*Pertinent Facts and Procedural History*

The record reflects that the applicant was born on November 15, 1994 in Canada. On June 6, 2011, a Form I-800, Petition to Classify Convention Adoptee as an Immediate Relative, was filed on the applicant's behalf by his maternal grandparents, [REDACTED] a citizen of the United States, and [REDACTED] a native of England and a U.S. lawful permanent resident, when the applicant was already sixteen years old. The petition was approved on June 27, 2011, and the applicant was admitted to the United States on October 4, 2011 on an IH-4 immigrant visa as a child to be adopted in the United States by a U.S. citizen under the Hague Convention. The record shows that the applicant was admitted as a lawful permanent resident as of October 4, 2011. The applicant was adopted by the [REDACTED] family on November 4, 2011, when he was sixteen years old. The adoption order was issued *nunc pro tunc* to November 14, 2010, when the applicant was just under the age of sixteen. The applicant seeks a Certificate of Citizenship under section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The director denied the application on the basis that the applicant did not derive citizenship through his adoptive father under section 320 of the Act because he was over the age of sixteen at the time of his adoption. On appeal, the applicant through counsel<sup>1</sup> contends that he meets the requirements for a Certificate of Citizenship.

*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 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, and applies 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). Here, the applicant was

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<sup>1</sup> Counsel is not properly the attorney of record as he failed to submit the most recent February 28, 2013 edition of the Form G-28, Notice of Entry of Appearance as Attorney of Record, as required. However, as the applicant executed the Form I-290B, Notice of Appeal or Motion, the appeal, counsel's brief, and all evidence in the record will be considered. A courtesy copy of this decision will be provided to counsel.

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).

For citizenship and nationality purposes, section 101(c) of the Act, 8 U.S.C. § 1101(c), states that under the Nationality and Naturalization provisions of the Act:

- (1) The term “child” means an unmarried person under twenty-one years of age and includes a child legitimated under the law of the child’s residence or domicile, or under the law of the father’s residence or domicile, whether in the United States or elsewhere, and, *except as otherwise provided in sections 320, and 321 of title III*, a child adopted in the United States, if such legitimation or adoption takes place before the child reaches the age of 16 years (except to the extent that the child is described in subparagraph (E)(ii) or (F)(ii) of subsection (b)(1)), and the child is in the legal custody of the legitimating or adopting parent or parents at the time of such legitimation or adoption [emphasis added].

(Emphasis added).

Section 320 of the Act requires an adopted child to meet the definition of “child” under section 101(b)(1) of the Act, which has three subsections at (E), (F) and (G). 8 U.S.C. § 1101(b)(1)(E), (F), (G). Here, the applicant was classified as a convention adoptee under section 101(b)(1)(G) of the Act, based on the approved Form I-800. Section 101(b)(1) of the Act provides in pertinent part:

The term “child” means an unmarried person under twenty-one years of age who is-

\* \* \*

(G)(i) a child, younger than 16 years of age *at the time a petition is filed on the child's behalf* to accord a classification as an immediate relative under section 201(b) of this title . . . .

\* \* \*

(Emphasis added).

*Analysis*

The applicant must first demonstrate that he satisfies the requirements for adopted children under section 101(b)(1)(G) of the Act before his citizenship claim under section 320(a) of the Act can be considered.

The applicant meets all the requirements set forth in section 101(b)(1)(G) of the Act. The convention adoptee petition on the applicant's behalf was approved and the applicant was admitted to the United States as an immigrant based on a finding that he met the applicable requirements, and nothing in the record indicates that these findings were in error. However, the record also shows that the applicant was already sixteen years of age at the time the Form I-800 petition was filed on his behalf, but the plain language of section 101(b)(1)(G)(i) requires that the child beneficiary be under age sixteen when the petition is filed. The regulation at 8 C.F.R. § 204.313(c), however, provides an exception to this filing deadline and states in pertinent part:

- (3) If the Form I-800A was filed after the child's 15th birthday but before the child's 16th birthday, the filing date of the Form I-800A will be deemed to be the filing date of the Form I-800, provided the Form I-800 is filed not more than 180 days after the initial approval of the Form I-800A.

Here, the record shows that the above exception was satisfied. The Form I-800A was filed October 15, 2010, after the applicant's fifteenth birthday and before his sixteenth birthday on November 15, 2010. The Form I-800 petition was subsequently filed on June 6, 2011, after the applicant turned sixteen years of age but within 180 days of the initial approval of the Form I-800A. Thus, pursuant to 8 C.F.R. § 204.313(c)(3), the filing date for the Form I-800 petition here is October 15, 2010, when the applicant was still under age sixteen. Accordingly, the applicant was properly deemed a "child" as defined under section 101(b)(1)(G) of the Act, thus satisfying the requirements of section 320(b) of the Act.

Finally, in considering the applicant's citizenship claim, the record demonstrates that the applicant also satisfies the remaining requirements under section 320(a) of the Act. The applicant was adopted in the United States on November 4, 2011 and has resided in the United States pursuant to a lawful admission for permanent residence in the legal and physical custody of his adopted U.S. citizen father, all while he was under eighteen years of age as required. Accordingly, upon de novo review, the applicant has demonstrated that all

the conditions for the automatic derivation of U.S. citizenship pursuant to section 320 of the Act have been met.<sup>2</sup>

*Conclusion*

The applicant bears the burden of proof to establish his eligibility for citizenship under section 320 of the Act. 8 C.F.R. §§ 320.3, 341.2(c). Here, the applicant has met this burden. Accordingly, the decision of the director will be withdrawn, the appeal will be sustained and the matter will be returned to the director for issuance of a certificate of citizenship to the applicant.

**ORDER:** The appeal is sustained. The matter is returned to the director for issuance of a certificate of citizenship to the applicant.

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<sup>2</sup> The record includes a copy of the applicant's U.S. passport, issued by the Department of State in August 2012. In *Matter of Villanueva*, 19 I&N Dec. 101 (BIA 1984), the Board of Immigration Appeals held that a valid U.S. passport is conclusive proof of U.S. citizenship.