



U.S. Citizenship  
and Immigration  
Services

(b)(6)



Date: **MAY 27 2014**

Office: MANCHESTER, NH

FILE: 

IN RE:

Applicant: 

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.

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

#### *Pertinent Facts and Procedural History*

The record reflects that the applicant was born on May 14, 1986 in Poland. The applicant was admitted to the United States as a lawful permanent resident on June 1, 2004, when he was 18 years old. The applicant's father became a U.S. citizen upon his naturalization on February 11, 2002. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship through his father 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 he was not admitted to the United States as a lawful permanent resident prior to his eighteenth birthday. *See* Decision of the Director, dated November 14, 2013.

On appeal, the applicant explains that he was issued his visa to immigrate to the United States in April 2004, but did not enter the United States until June because he was in school. *See* Statement of the Applicant on Form I-290B, Notice of Appeal to the AAO. He states that he wishes to reunite with his family in the United States. *Id.*

#### *Applicable Law*

The AAO reviews these proceedings *de novo*. *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 “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). Section 320 of the Act, as amended by the CCA, is applicable to the applicant’s case and 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.

*Analysis*

The record indicates that the applicant is the child of a U.S. citizen. However, he was admitted to the United States as a lawful permanent resident after his eighteenth birthday. The applicant, therefore, was not "residing in the United States . . . pursuant to a lawful admission for permanent residence" while under the age of eighteen years and therefore did not automatically acquire U.S. citizenship under section 320(a) of the Act. While the applicant's reasons for delaying his entry into the United States until after he turned 18 are understandable, we have no discretionary authority to waive the requirements of the statute and implementing regulations. *See United States v. Nixon*, 418 U.S. 683, 695-96 (1974) (as long as regulations remain in force, they are binding on government officials).

*Conclusion*

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. The denial of this application is without prejudice to the filing of an Application for Naturalization (Form N-400) once the applicant has met the eligibility criteria at section 316 of the Act, 8 U.S.C. § 1427.

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