



U.S. Citizenship  
and Immigration  
Services

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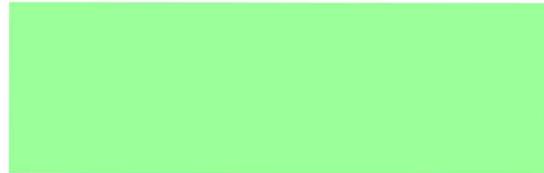


Date: **SEP 04 2014** Office: SAN FRANCISCO, CA FILE:

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:



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 San Francisco, California Field Office (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.

*Pertinent Facts and Procedural History*

The applicant was born to married parents in El Salvador on [REDACTED]. His biological father, now deceased, was not a U.S. citizen. His mother became a naturalized U.S. citizen on [REDACTED] when the applicant was 18 years old. The record reflects that the applicant resides in El Salvador and seeks a certificate of citizenship based on the claim that he derived U.S. citizenship under section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. §1431, through his U.S. citizen stepfather.

The director denied the applicant's citizenship claim, finding that he had failed to establish U.S. citizenship under section 320 of the Act, because he was over the age of 18 when the provision went into effect, and he was not the *child* of his stepfather, as defined in section 101(c) of the Act, 8 U.S.C. § 1101(c).<sup>1</sup> Through counsel, the applicant asserts, on appeal, that section 320 of the Act should be applied to him retroactively, and that court cases demonstrate that he may derive U.S. citizenship through his non-adoptive U.S. citizen stepfather under section 320 of the Act.<sup>2</sup>

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<sup>1</sup> The director also found that the applicant did not establish U.S. citizenship under former section 321 of the Act, 8 U.S.C. § 1432, because he was over the age of 18 when his mother became a naturalized U.S. citizen, and that he did not acquire U.S. citizenship under former section 301 of the Act, 8 U.S.C. §1401, because he was not born to a U.S. citizen.

<sup>2</sup> Former section 320 of the Act was amended by the Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631 (CCA), and took effect on February 27, 2001. The provisions of the CCA are not retroactive and section 320 of the Act, as amended, applies only to persons who were not yet 18 years old as of February 27, 2001. See *Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001).

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.

We review these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

### *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 (Secretary)) for a certificate of citizenship, and that a certificate may be furnished by the Secretary if such individual is at the time within 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 . . .”).

### *Analysis*

The record reflects that the applicant was physically present and residing outside of the United States in El Salvador when his Form N-600 was filed with U.S. Citizenship and Immigration Services (USCIS). Although counsel for the applicant listed United States addresses for the applicant on the Form N-600 (filed January 26, 2012) and on the appeal (filed July 20, 2012), the Form G-28, *Notice of Entry of Appearance as Attorney or Accredited Representative* (Form G-28) filed with the applicant’s Form N-600 and signed by the applicant on December 15, 2011, contains no address information for the applicant. The Form G-28 that was initially submitted on appeal is a photocopy of the Form G-28 signed by the applicant on December 15, 2011, and lists his address as, “in ICE custody;” and a Form G-28 signed by the applicant on August 22, 2014, shows that his address is in El Salvador; moreover, a review of the record and of USCIS database information reflects that the applicant was deported to El Salvador on December 21, 2011.

As noted above, a citizenship claim made by an individual physically present outside of the United States is only properly made before a consular officer. As the record demonstrates that the applicant is physically present in El Salvador, jurisdiction to adjudicate his claim to U.S. citizenship lies within the U.S. Department of State, not USCIS. Accordingly, the applicant’s appeal must be dismissed and his Form N-600 must remain denied.

*Conclusion*

It is the applicant's burden to establish eligibility for the immigration benefit sought. *See* Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 341.2(c). Here, that burden has not been met.

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