



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **AUG 14 2015**

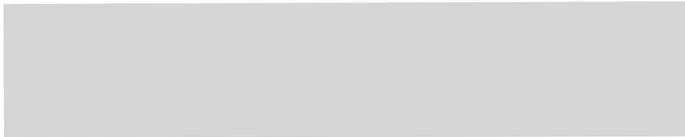
FILE #: [REDACTED]

APPLICATION RECEIPT #: [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:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Philadelphia, Pennsylvania, denied the application. 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 in Jamaica on [REDACTED]. The record indicates that the applicant entered the United States in [REDACTED] with a non-immigrant visa. On [REDACTED] [REDACTED] the applicant was legally adopted by two U.S. citizen parents. On March 23, 2012, the applicant's adoptive father filed Form I-130, Petition for Alien Relative (Form I-130), which was approved on September 11, 2012. The applicant filed Form I-485, Application to Register Permanent Residence or Adjust Status (Form I-485) on March 23, 2012 in conjunction with the Form I-130 filed by her adoptive father. The Form I-485 was also approved on September 11, 2012. The applicant seeks a certificate of citizenship claiming that she derived U.S. citizenship from her adoptive parents pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The Field Office Director determined that the applicant had not been in the legal custody of her adoptive parents for the required two year period such that she could acquire U.S. citizenship. Citing to the regulations at 8 C.F.R. § 320.1(2), the Field Office Director concluded that legal custody of the applicant began on her adoption date and that her application for adjustment of status to lawful permanent resident was granted in error. The Field Office Director denied the Form N-600, Application for Certificate of Citizenship (N-600), accordingly. *See Decision of the Field Office Director*, dated August 26, 2014.

On appeal, the applicant contends that, even though the final adoption decree was issued on [REDACTED] [REDACTED] she was in the legal and physical custody of her adoptive parents since [REDACTED]. In the alternative, the applicant contends that the U.S. Citizenship and Immigration Services (USCIS) cannot go back on the decision to grant her lawful permanent residence, and therefore the Form N-600 should be approved under the doctrine of equitable estoppel.

We conduct 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, she is presumed to be an alien and bears the burden of establishing her 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 "preponderance of the evidence" standard requires that the record demonstrate that the applicant's claim is "probably true," based on the specific facts of each case. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (citing *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r. 1989)).

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 (9th Cir. 2005). Section 320 of the Act, as amended by the Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631 (CCA), applies to this appeal because the applicant was not yet 18 years old as of the February 27, 2001 effective date of the CCA. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec.

153, 156 (BIA 2001) (en banc).

Section 320 of the Act, 8 U.S.C. § 1431, 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).

Section 101(b)(1) of the Act, 8 U.S.C. § 1101(b)(1), defines a child as, among other definitions:

- (E)(i) a child adopted while under the age of sixteen years if the child has been in the legal custody of, and has resided with, the adopting parents or parents for at least two years...

The applicant and the Field Office Director do not dispute that the applicant fulfills some requirements for automatic citizenship under the CCA. Both of the applicant's adoptive parents are United States citizens, and as of the effective date of the CCA, the applicant was under 18 years of age. However, the record does not reflect that the applicant obtained his permanent residence lawfully, as he did not meet the legal custody requirements in section 101(b)(1)(E) of the Act.

On appeal, the applicant states that in [REDACTED] all parties executed a guardianship agreement giving the applicant's adoptive parents the legal and physical custody of the applicant, and therefore the applicant has resided in the legal and physical custody of her adoptive parents since [REDACTED]

The record includes a copy of the applicant's Form I-20, Certificate of Eligibility for Nonimmigrant (F-1) Student Status – For Academic and Language Students (Form I-20), which states that the applicant "will live with family friends who will provide her support," and includes the signature of the applicant's adoptive father, dated [REDACTED]. In addition, the record includes copies of school records for the applicant, indicating that she was living with her adoptive parents from [REDACTED] until [REDACTED], and a [REDACTED] psychological report for the applicant indicating she was living with her adoptive parents in [REDACTED]. The record therefore establishes that the applicant was residing in the physical custody of her adoptive parents.

For purposes of the CCA, the term adopted “means adopted pursuant to a full, final, and complete adoption,” and an adopted child must also meet the requirements of section 101(b)(1)(E) or 101(b)(1)(F) of the Act. 8 C.F.R. § 320.1. Furthermore, “[in] the case of an adopted child, a determination that a U.S. citizen parent has legal custody will be based on the existence of a final adoption decree.” 8 C.F.R. § 320.1(2).

With respect to legal custody, the record includes a document which purports to be a guardianship agreement in which the natural parents of the applicant grant legal and physical custody of the applicant to her adoptive parents. This document is dated [REDACTED] and is signed by the natural parents of the applicant, and two witnesses (although the document does not include the signatures of the adoptive parents). The record does not reflect that the guardianship agreement was properly executed, and that a family court in Jamaica approved the guardianship arrangement, or that the guardianship agreement otherwise met requirements for validity under Jamaican law. As such, we cannot conclude that the submitted guardianship agreement was sufficient to grant legal custody of the applicant to her adoptive parents in [REDACTED]

The final adoption decree for the applicant to be adopted by her adoptive parents was not issued until [REDACTED]. As noted by the Field Office Director, pursuant to 8 C.F.R. 320.1(2), a determination that a U.S. citizen parent has legal custody is based on the final adoption decree. As we found that the [REDACTED] guardianship agreement was insufficient to convey legal custody, we affirm the Field Office Director’s finding that the applicant was not in the legal custody of his U.S. citizen parents until [REDACTED] the date of the final adoption decree.

The BIA has held that the term “lawfully admitted for permanent residence” does not apply to aliens who had obtained their permanent resident status by fraud, or had otherwise not been entitled to it. *See Matter of Koloamatangi*, 23 I&N Dec. 548 (BIA 2003); *citing Monet v. INS*, 791 F.2d 752 (9th Cir. 1986); *Matter of Longstaff*, 716 F.2d 1439, 1441-42 (5th Cir. 1983); *cf. Biggs v. INS*, 55 F.3d 1398, 1401 (9th Cir. 1995). In this case, the record reflects that the applicant was not entitled to permanent residence when she was granted the benefit on [REDACTED]. In order for the Form I-130 and Form I-485 to be properly executed and approved, the applicant has to show that she meets the definition of a “child” under section 101(b) of the Act, as stated above. However, at the time the Form I-130 and Form I-485 were filed on [REDACTED] the applicant had only been in the legal custody of her adoptive parents for a period of about five months, after her final adoption decree was entered on [REDACTED].

As such, we concur with the Field Office Director that because the applicant was not entitled to permanent residence, she was not lawfully admitted for permanent residence. Therefore, the applicant has not established that she is eligible to derive citizenship from her adoptive parents pursuant to section 320 of the Act.

The applicant further contends, through counsel, that USCIS should be equitably estopped from denying the Form N-600 as a USCIS officer determined that the applicant was eligible for adjustment of status.

It is well-established that U.S. citizenship cannot be obtained through estoppel. A person may only obtain citizenship in strict compliance with the statutory requirements imposed by Congress. *INS v. Pangilinan*, 486 U.S. 875, 885 (1988).

Moreover, the Administrative Appeals Office, like the Board of Immigration Appeals, is without authority to apply the doctrine of equitable estoppel so as to preclude a component part of USCIS from undertaking a lawful course of action that it is empowered to pursue by statute or regulation. *See Matter of Hernandez-Puente*, 20 I&N Dec. 335, 338 (BIA 1991). Estoppel is an equitable form of relief that is available only through the courts. The jurisdiction of the Administrative Appeals Office is limited to that authority specifically granted to it by the Secretary of the United States Department of Homeland Security. *See* DHS Delegation Number 0150.1 (effective March 1, 2003); *see also* 8 C.F.R. § 2.1 (2004). The jurisdiction of the AAO is limited to those matters described at 8 C.F.R. § 103.1(f)(3)(E)(m) (as in effect on February 28, 2003). Accordingly, we have no authority to address the respondent's equitable estoppel claim.

It is the applicant's burden to establish the claimed citizenship by a preponderance of the evidence. Section 341(a) of the Act, 8 U.S.C. § 1452(a); 8 C.F.R. § 341.2(c). Here, that burden has not been met.

ORDER: The appeal is dismissed.