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**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF O-D-A-

DATE: OCT. 8, 2015

APPEAL OF BALTIMORE, MARYLAND, FIELD OFFICE DECISION

APPLICATION: N-600, APPLICATION FOR CERTIFICATE OF CITIZENSHIP

The Applicant, a native of the Ivory Coast and a citizen of Togo, seeks a Certificate of Citizenship. 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 Field Office Director, Baltimore, Maryland, denied the application. The matter is now before us on appeal. The appeal will be dismissed.

The record reflects that the Applicant was born on [REDACTED]. The Applicant entered the United States as an asylee on February 27, 1999.¹ The Applicant's father and mother became U.S. citizens upon their naturalizations on June 23, 2006 and May 16, 2013, respectively.

The Director denied the Form N-600 finding that the Applicant did not acquire U.S. citizenship because she had not been admitted to the United States as a lawful permanent resident as is required by section 320 of the Act. *See Director's Decision*, dated February 11, 2015.

On appeal, the Applicant maintains that the Director erred in denying her citizenship claim. In support of the appeal, the Applicant's father submits a letter and a copy of the English translation of the Applicant's Ivory Coast birth certificate.² The Applicant's father requests a favorable review of the appeal and states that he obtained a U.S. passport on her behalf by submitting his naturalization certificate and her birth certificate. *See Applicant's U.S. Passports*, issued July 26, 2007 and September 25, 2012.

We conduct appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). 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). The Applicant was born in 1996. Section 320 of the Act, as amended by the CCA, is therefore applicable to her case.

¹ The Applicant claims that she was admitted to the United States on February 27, 2008 as [REDACTED]. However, there is no evidence of this entry or that the entry was as a lawful permanent resident.

² The Applicant indicates additional evidence and a brief would be submitted within 30 days; however, the record contains no additional briefs. We will therefore consider the evidence submitted on appeal as complete.

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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.

The record indicates that the Applicant is the child of U.S. citizens. However, there is no evidence to establish that she was admitted to the United States as a lawful permanent resident. The term lawfully admitted for permanent residence 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." 8 C.F.R. § 1.2. The Applicant was admitted to the United States as an asylee on February 27, 1999, and there is no record of her filing a Form I-485, Application to Register Permanent Residence or Adjust Status, at any time. The Applicant is, consequently, not "residing in the United States . . . pursuant to a lawful admission for permanent residence" and, therefore, did not automatically acquire U.S. citizenship upon her parents' naturalization under section 320 of the Act.

While the Applicant has not asserted that she is applying under any other section of the Act applicable to her date of birth, we will consider whether she is eligible under section 320 of Act as applicable to a child born in [REDACTED] Section 322 of the Act, 8 U.S.C. § 1433, provides that:

- (a) A parent who is a citizen of the United States may apply for naturalization on behalf of a child born outside of the United States who has not acquired citizenship automatically under section 320. The Attorney General shall issue a certificate of citizenship to such applicant upon proof, to the satisfaction of the Attorney General, that the following conditions have been fulfilled:
 - (1) At least one parent is a citizen of the United States, whether by birth or naturalization.
 - (2) The United States citizen parent--
 - (A) has been 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; or
 - (B) has a citizen parent who has been 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.

- (3) The child is under the age of eighteen years.
- (4) The child is residing outside of the United States in the legal and physical custody of the applicant [citizen parent] (or, if the citizen parent is deceased, an individual who does not object to the application).
- (5) The child is temporarily present in the United States pursuant to a lawful admission, and is maintaining such lawful status.

Section 322 of the Act requires that an applicant be under the age of 18 years, reside abroad with his or her citizen parent and be temporarily present in the United States pursuant to a lawful admission. The Applicant does not reside abroad as she is currently with her parents in the United States. Additionally, the Applicant is over the age of 18 years. She is therefore not eligible for U.S. citizenship under section 322 of the Act.

The Applicant must meet her burden of proof by establishing the claimed citizenship by a preponderance of the evidence. 8 C.F.R. § 320.3. Here, the Applicant has not met this burden. Accordingly, the Applicant is not eligible for a certificate of citizenship under section 320 of the Act, or under section 322 of the Act, and the appeal will be dismissed. This dismissal is without prejudice to the future filing of a Form I-485 or a Form N-400, Application for Naturalization.

ORDER: The appeal is dismissed.

Cite as *Matter of O-D-A-*, ID# 13989 (AAO Oct. 8, 2015)