



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

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

MATTER OF S-A-S-

DATE: SEPT. 25, 2019

APPEAL OF NEW YORK, NEW YORK DISTRICT OFFICE DECISION

APPLICATION: FORM N-600, APPLICATION FOR CERTIFICATE OF CITIZENSHIP

The Applicant seeks a Certificate of Citizenship to reflect that he derived U.S. citizenship from his adoptive mother under section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

Because the Applicant was born abroad, he is presumed to be a foreign national 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 Director of the New York, New York District Office denied the application and a subsequent motion to reopen on grounds that: the Applicant was admitted to the United States with an IR-4 immigrant visa classification, as a child coming to the country to be adopted; he did not establish that his adoptive mother obtained a final adoption order before he turned 16; and he therefore did not qualify as an “adopted child” for section 320 of the Act derivative citizenship purposes.

On appeal the Applicant provides previously submitted documentation and claims that in his case, sections 320(b) and 101(b)(1)(F)(i) of the Act require only that his final adoption occur prior to the age of eighteen (not sixteen.) He concludes that because his mother obtained his final adoption order before he turned 18, he satisfies “adopted child” definition and other requirements to derive U.S. citizenship under section 320 of the Act.

Upon *de novo* review, we will remand the matter for proceedings consistent with this decision.

I. LAW

For derivative citizenship purposes, we apply “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, which was in effect when the Applicant turned 18 (in October 2016), applies to his derivative citizenship claim.

Section 320 of the Act provides 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.
- (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), 8 U.S.C. § 1101(b)(1).

Because the parent-child relationship between the Applicant and his U.S. citizen mother was created by adoption, the Applicant is subject to the provisions of section 320(b) of the Act, and he must meet the definition of a “child” as defined at section 101(b)(1) of the Act. The regulation at 8 C.F.R. § 320.1 clarifies that an “adopted child” is a person who meets the requirements of section 101(b)(1)(E) or (F) of the Act.

Section 101(b)(1)(E)(i) of the Act defines the term “child” in pertinent part, as an unmarried person under twenty-one years of age who is “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 parent or parents for at least two years.”

Alternatively, section 101(b)(1)(F)(i) of the Act, which pertains to adopted orphans, provides in pertinent part that the term “child” means an unmarried person under twenty-one years of age who is:

under the age of sixteen at the time a petition is filed in his behalf to accord a classification as an immediate relative under section 201(b), who is an orphan . . . who has been adopted abroad . . . or who is coming to the United States for adoption by a United States citizen and spouse jointly, or by an unmarried United States citizen at least twenty-five years of age, who have or has complied with the preadoption requirements, if any, of the child's proposed residence. . . .

The term “adopted” as used in section 320(b) of the Act refers to a full, final and complete adoption. 8 C.F.R. § 320.1. “[I]f a foreign adoption of an orphan was not full and final . . . the child is not considered to have been full, finally and completely adopted and must be readopted in the United States.” *Id.*

II. ANALYSIS

It is undisputed, in this case, that the Applicant was born in Pakistan on [redacted] 1998, that he turned 16 in [redacted] 2014, and that he turned 18 in [redacted] 2016. The Applicant also does not contest, and the record reflects, that his adoptive U.S. citizen mother was granted guardianship over him in [redacted] Pakistan in November 1988, and that he was admitted into the United States in April 1999, with an IR-4 immigration visa classification, as a child coming to the country to be adopted. Lastly, it is undisputed that the Applicant's mother obtained his final adoption order in New York in May 2015, when the Applicant was 16 years old. The issue on appeal is whether the Applicant has established that he meets the definition of a "adopted child" under section 101(b)(1) of the Act, despite being adopted after he turned 16.

The record in this case contains an approved Form I-600, Petition to Classify Orphan as an Immediate Relative. The child definition set forth in section 101(b)(1)(F)(i) of the Act therefore applies to the Applicant. Because the Form I-600 was filed prior to the Applicant's 16th birthday, the initial age requirement set forth in section 101(b)(1)(F)(i) of the Act has been met. The Applicant claims further, on appeal that sections 101(b)(1)(F)(i) and 320(b) and of the Act require only that his final adoption occur prior to the age of 18, and not 16. Upon review, we agree.

Again, section 101(b)(1)(F)(i) of the Act states that the Form I-600 must be filed prior to the orphan's 16th birthday. It does not state, however, that an orphan who is coming to the United States for adoption must complete the U.S. adoption process prior to turning 16. Moreover, Department of State guidance on IR-4 immigrant visas provides that the consular officers should remind Form I-600 petitioners "of their obligation to adopt (or re-adopt) the child in the U.S." and inform them that "their child will not automatically acquire U.S. citizenship under section 320 until/unless they obtain a final adoption decree in the U.S. *while the child is still under age 18.*" See U.S. Department of State cable no. 01-State-105804 (June 16, 2001) (emphasis added). Department of State intercountry adoption guidance for Pakistan also does not indicate that there is an under 16 age requirement for individuals adopted their child in the United States, and states with regard to section 320 of the Act, that "a child who enters the United States on an IR4 visa (to be adopted in the United States) will acquire American citizenship when the adoption is full and final in the United States." See Department of State Pakistan Intercountry Adoption Information and FAQ: Child Citizenship Act of 2000 articles at <https://travel.state.gov>.

Here, the Applicant has established that his mother obtained a full and final adoption order for him in May 2015, when he was 16 years old. Since he was under the age of 18, he meets section 101(b)(1)(F)(i) of the Act requirements for section 320(b) of the Act adoptive child purposes. Accordingly, the Applicant has overcome the grounds of the Director's denial.

Because the Director did not address the merits of the Applicant's section 320 of the Act derivative citizenship claim, we will remand the matter to the Director to allow the Applicant an opportunity to submit related evidence, if necessary, and for issuance of a new decision.

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ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

Cite as *Matter of S-A-S-*, ID# 4287495 (AAO Sept. 25, 2019)