



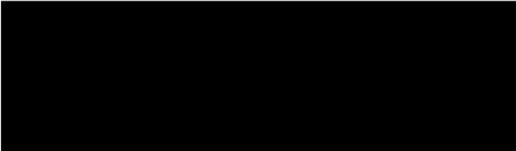
U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



FILE: [REDACTED] Office: Philadelphia

Date: FEB 29 2000

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under Section 341(a) of
the Immigration and Nationality Act, 8 U.S.C. 1452(a)

IN BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Acting District Director, Philadelphia, Pennsylvania, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on February 11, 1954 in [REDACTED]. The applicant's father, [REDACTED] was born in Yemen in 1935, and became a naturalized U.S. citizen on January 28, 1964. The applicant's mother, [REDACTED] was born in 1933 in Yemen and never became a United States citizen. The applicant's parents married each other on March 25, 1950. The applicant was lawfully admitted for permanent residence on February 21, 1971. The applicant claims eligibility for a certificate of citizenship under § 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1432.

The district director determined the record failed to establish that the applicant met the requirements in that he failed to establish that there had been a legal separation of his parents as held in Matter of H--, 3 I&N Dec. 742 (BIA 1949). The district director then denied the application accordingly.

On appeal, the applicant states that the fact that his father left Yemen and migrated to the United States, leaving or abandoning his mother, is analogous to legal separation. The applicant states that he was in the legal custody of his father.

Section 321 of the Act provides, in part, that:

(a) A child born outside of the United States of alien parents, or of an alien parent and a citizen parent who has subsequently lost citizenship of the United States, becomes a citizen of the United States upon fulfillment of the following conditions:

- (1) The naturalization of both parents; or
- (2) The naturalization of the surviving parent if one of the parents is deceased; or
- (3) The naturalization of the parent having legal custody of the child when there has been a legal separation of the parents or the naturalization of the mother if the child was born out of wedlock and the paternity of the child has not been established by legitimation; and if-
- (4) Such naturalization takes place while said child is under the age of 18 years; and
- (5) Such child is residing in the United States pursuant to a lawful admission for permanent residence at the time of the naturalization of the parent last naturalized under clause (2) or (3) of this subsection,

or thereafter begins to reside permanently in the United States while under the age of 18 years.

In Matter of Fuentes-Martinez, Interim Decision 3316 (BIA 1997), the Board stated the following; "Through subsequent discussions, [the interested agencies] have agreed on what we believe to be a more judicious interpretation of § 321(a). We now hold that, as long as all the conditions specified in § 321(a) are satisfied before the minor's 18th birthday, the order in which they occur is irrelevant."

The record establishes that (1) the applicant's father became a naturalized U.S. citizens prior to his 18th birthday, (2) he became the beneficiary of an approved visa petition filed by his father, and (4) he was residing in the United States in his father's legal custody as a lawful permanent resident after his father naturalized.

However, in order for the applicant to receive the benefits of § 321 of the Act, there must have been a legal separation of the parents. Matter of H--, 3 I&N Dec. 742 (C.O. 1949), held that the term "legal separation" means either a limited or absolute divorce obtained through judicial proceedings. There is no evidence in the record to show that the applicant's father was legally separated from the applicant's mother through a judicial proceeding.

The applicant has failed to satisfy the requirements of § 321(a) (3) of the Act; therefore, there is no provision under the law by which the applicant could have automatically acquired U.S. citizenship through his father's naturalization. The appeal will be dismissed. This decision is without prejudice to the applicant seeking U.S. citizenship through normal naturalization procedures.

ORDER: The appeal is dismissed.

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prevent clearly unwarranted
invasion of personal privacy