



U.S. Department of Justice
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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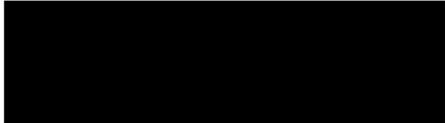
FILE: [Redacted] Office: Philadelphia

Date: JAN 24 2000

IN RE: Applicant: [Redacted]

APPLICATION: Application for Certificate of Citizenship Document under § 341
of the Immigration and Nationality Act, 8 U.S.C. 1452

IN BEHALF OF APPLICANT:



Public Copy

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.

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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 applicant was born in Cambodia on March 7, 1977. The applicant's father, [REDACTED] was born in Cambodia in 1940 and became a naturalized U.S. citizen on November 10, 1992. The applicant's mother, [REDACTED] was born in Cambodia in 1945 and is a lawful permanent resident. The applicant was admitted to the United States on June 3, 1981 as a refugee. On August 8, 1984, the applicant's status was adjusted to that of lawful permanent resident. The applicant is seeking a certificate of citizenship under § 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1432

The record indicates that the applicant's mother filed a Form N-400 application on June 27, 1997 listing her residence with her husband and two naturalized and four LPR children. That application was denied.

On appeal, counsel states that the applicant's parents were legally separated and the applicant was residing in the uncontested custody of his father. Counsel submits an undated affidavit from the applicant's father and an affidavit notarized on July 26, 1999 from the applicant's mother in which is asserted that the parents separated in early 1989. It is noted that the applicant's father and mother have the same address, [REDACTED]

[REDACTED] listed on the application which was filed on May 31, 1999. Counsel states that the term "separate and apart" means the complete cessation of any and all cohabitation, whether the parties continue to live in the same residence or not.

Section 321(a) of the Act. 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 the applicant's 18th birthday, (2) the applicant's mother is a lawful permanent resident and (3) there is no evidence in the record to establish that the applicant's parents have been legally separated or divorced.

In order for the applicant to receive the benefits of § 321 of the Act, both of his parents had to naturalize prior to the applicant's 18th birthday.

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. See INTERP 320.1(a)(6).

There is no provision under the law by which the applicant could have automatically acquired U.S. citizenship only through his father's naturalization when both parents are alive and married to each other. Therefore, the acting district director's decision will be affirmed. This decision is without prejudice to the applicant seeking U.S. citizenship through normal naturalization procedures.

ORDER: The appeal is dismissed.