



U.S. Department of Justice

Immigration and Naturalization Service

DD

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

[Redacted]

[Redacted]

Date:

MAV 8 2000

IN RE: Applicant:

[Redacted]

APPLICATION:

[Redacted]

IN BEHALF OF APPLICANT: Self-represented

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.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Identifying information to prevent clearly unwarranted invasion of personal privacy

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 September 29, 1959 in Catazaro, Italy. The applicant's father, [REDACTED], was born in 1935 in Italy and became a naturalized U.S. citizen on May 23, 1974. The applicant's mother, [REDACTED], was born in 1946 in Italy and never claimed to be a United States citizen. The applicant's parents married each other in October 1958. The applicant was lawfully admitted for permanent residence on December 16, 1966. The applicant seeks a certificate of citizenship under § 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1432.

The acting district director determined the record failed to establish that both of the applicant's parents had naturalized. The acting district director then denied the application accordingly.

On appeal, the applicant requests additional time in which to hire another attorney.

According to the record, the applicant's parents are married and living together; therefore, both parents must have naturalized prior to the applicant's 18th birthday. Since the statute and the accompanying regulations are clear and uncomplicated, the applicant's request for additional time is denied and the appeal will be adjudicated based on documentation present in the record.

Section 321 CHILD BORN OUTSIDE THE UNITED STATES OF ALIEN PARENT;
CONDITIONS UNDER WHICH CITIZENSHIP AUTOMATICALLY ACQUIRED

(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.

The record establishes that (1) the applicant's father became a naturalized U.S. citizen in 1974 and prior to the applicant's 18th birthday, (2) the applicant was a legitimate child at birth, and (3) he was residing in the United States in his parent's legal custody pursuant to a lawful admission for permanent residence.

However, the statute and the regulations require that the applicant must be under the age of 18 years at the time of the naturalization of the parent last naturalized. The applicant's mother has never become a naturalized U.S. citizen.

Absent such supportive evidence, the applicant has not shown that he derived United States citizenship solely through his father's naturalization.

8 C.F.R. 341.2(c) provides that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. The applicant has not met this burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.