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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: Honolulu Date: FEB 27 2003

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship under Section 320 of the Immigration and Nationality Act, 8 U.S.C. § 1431

IN BEHALF OF APPLICANT: Self-represented

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that 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 that 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 that originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Honolulu, Hawaii, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant was born on August 3, 1986, in the Philippines. The applicant's father, was born in the Philippines in 1942 and became a naturalized U.S. citizen on January 28, 2000. The applicant's mother, was born in the Philippines in 1954 and never had a claim to United States citizenship. The applicant's parents never married each other. The applicant was lawfully admitted for permanent residence on April 3, 2001. The applicant is seeking a certificate of citizenship under section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The district director reviewed the record and concluded that the applicant was ineligible for the benefits of the CCA as her parents never married and she was not legitimated.

On appeal, the applicant's father states that the decision was based on the wrong section of law and that he and the applicant had lived together before he immigrated. The applicant's father states that he fathered two children from his relationship born in May 1983 born in August 1986. The applicant's father states that he filed separate citizenship applications for both of his children and the application was approved in September 2001. The applicant's father states that he was devastated to learn that the applicant was not given a certificate of citizenship when she and William are blood siblings and have the same father and mother.

The AAO cannot comment on the circumstances relating to the application of because that matter is not pending adjudication before the AAO.

Title III, section 320 of the Act was amended by the Child Citizenship Act of 2000 (CCA), and took effect on February 27, 2001. The CCA benefits all persons who have not yet reached their 18th birthdays as of February 27, 2001. The applicant was 14 years and 6 months old on February 27, 2001.

Section 320(a) of the Act, effective on February 27, 2001, provides, in part, that 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.
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> (2) The child is under the age of eighteen years.
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> (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).

Stepchildren and children born out of wedlock who have not been legitimated are not included in the definition of the term "child" as used in Title III, section 101(c) of the Act, 8 U.S.C. § 1101(c). Therefore, unless such children are adopted or legitimated, they will not be eligible for benefits under the CCA.

Former section 320 of the Act prior to its amendment provided that:

> (a) A child born outside of the United States, one of whose parents at the time of the child's birth was an alien and the other of whose parents then was and never thereafter ceased to be a citizen of the United States, shall, if such parent is naturalized, become a citizen of the United States, when
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> > (1) such naturalization takes place while such child is under the age of 18 years; and
> >
> > (2) such child is residing in the United States pursuant to a lawful admission for permanent residence at the time of naturalization or thereafter and begins to reside permanently in the United States while under the age of 18 years.
>
> (b) Subsection (a) of this section shall apply to an adopted child only if the child is residing in the United States at the time of naturalization of such adoptive parent, in the custody of his adoptive parents, pursuant to a lawful admission for permanent residence.

The applicant does not qualify for consideration under former section 320 of the Act because one of her parents was not a U.S. citizen at the time of her birth.

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 failed to meet that burden. Therefore, the appeal will be dismissed.

This decision is without prejudice to the applicant's seeking U.S. citizenship through normal naturalization procedures by filing an Application for Naturalization on Form N-400 with a Service office having jurisdiction over her place of residence.

ORDER: The appeal is dismissed.