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Department of Homeland Security

Bureau of Citizenship and Immigration Services

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[redacted]

MAY 07 2003

FILE [redacted] Office: Baltimore Date:

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship under Section 320 of the Immigration and Nationality Act, 8 U.S.C. § 1431 and Application for Naturalization under Section 322 of the Act, 8 U.S.C. § 1433

IN BEHALF OF APPLICANT: [redacted]

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 Bureau of Citizenship and Immigration Services (Bureau) 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Baltimore, Maryland, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant was born on June 18, 1997, in Nigeria. The applicant's adoptive father, was born in Nigeria in December 1955 and became a naturalized U.S. citizen on August 27, 1993. The applicant was admitted to the United States on May 4, 1999, as a nonimmigrant visitor with authorization to remain with extensions until May 31, 2000. The applicant was adopted on May 19, 2000, and a Form N-643 (Application for Certificate of Citizenship on behalf of Adopted Child) was submitted on May 22, 2000. The applicant is seeking to become a derivative citizen under section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431, or naturalized U.S. citizen under section 322 of the Act, 8 U.S.C. § 1433.

The district director reviewed the record and concluded that the applicant failed to comply with present or prior section 320 of the Act because she had not been lawfully admitted for permanent residence. The district director concluded that the applicant failed to satisfy prior section 322 of the Act because under that section an applicant only becomes a U.S. citizen upon the approval of the application and taking of the oath of allegiance. The district director further found that she was not eligible under current section 322 because she was no longer in valid status. The district director denied the application accordingly.

On appeal, counsel reviews the steps taken and documentation submitted and resubmitted in filing the application. Counsel discusses the Bureau requests for additional information and his filing of a Petition for a Writ of Mandamus on October 18, 2002, after waiting more than 28 months for a decision on the application. Counsel states that he complied with all the provisions of section 322 of the Act prior to being amended and the application should be approved under that section.

Sections 320 and 322 of the Act were 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 3 years and 8 months old on February 27, 2001. Therefore, she is eligible for the benefits of the CCA.

Bureau guidelines provide that pending Form N-600's and Form N-643's filed under old section 322 of the Act for adopted or biological children who are not lawful permanent residents but were eligible for citizenship based on the physical presence of a citizen parent, should be processed under the new section 322 of the Act.

Although the application was filed prior to the CCA amendments, it was still pending when the amendments became effective 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.
>
> (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).

The applicant failed to establish that she was lawfully admitted for permanent residence.

Section 322(a) of the Act in effect on February 27, 2001, provides that: A parent who is a citizen of the United States may apply for naturalization on behalf of a child born outside of the United States who has not acquired citizenship automatically under section 320. The Attorney General shall issue such a certificate of citizenship to such parent upon proof, to the satisfaction of the Attorney General, that the following conditions have been fulfilled:

> (1) At least one parent is a citizen of the United States, whether by birth or naturalization.
>
> (2) The United States citizen parent-
>
> > (A) has been physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years; or
> >
> > (B) has a citizen parent who has been physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years.
>
> (3) The child is under the age of eighteen years.
>
> (4) The child is residing outside of the United States in the legal custody and physical custody of the citizen parent, is temporarily present in the United States

pursuant to a lawful admission, and is maintaining such lawful status.

(b) Upon approval of the application (which may be filed from abroad) and, except as provided in the last sentence of section 337(a), upon taking and subscribing before an officer of the Service within the United States to the oath of allegiance required by this Act of an applicant for naturalization, the child shall become a citizen of the United States and shall be furnished by the Attorney General with a certificate of citizenship.

(c) Subsections (a) and (b) 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).

In order to satisfy the requirements of section 322 of the Act, the applicant must be lawfully admitted to the United States and maintain such lawful status until the application for certificate of citizenship is approved and the oath of allegiance administered (unless waived). The applicant failed to satisfy these requirements as she went out of lawful status on May 21, 2000.

A discussion of the interim rules regarding the above amendments and requests for comments is contained in the *Federal Register*, 66 Fed. Reg. 32138 (June 13, 2001). The following question was posed. Do adopted children who initially entered the United States as non-immigrants or were paroled into the United States for humanitarian purposes qualify for automatic citizenship if currently they do not have lawful permanent resident status?

The response was no. Adopted children who are currently residing in the United States with a U.S. citizen parent but who are in nonimmigrant or parole status do not qualify for automatic citizenship. Such children will acquire automatic citizenship only after they immigrate to the United States or adjust status in the United States to that of a lawful permanent resident. Once the child becomes a lawful permanent resident and all other requirements of the CCA are met, the child will be a citizen of the United States automatically by operation of law.

Pursuant to 8 C.F.R. § 341.2(c), 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.

ORDER: The appeal is dismissed.