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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: Miami

Date: JAN 28 2003

IN RE: Applicant: [Redacted]

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

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 Acting District Director, Miami, Florida, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant was born on May 28, 1986, in Honduras. The applicant's father, [REDACTED], was born in Honduras in September 1965 and became a naturalized U.S. citizen on August 15, 2000. The applicant's mother, [REDACTED], was born in October 1959 in Honduras and never had a claim to United States citizenship. The applicant's parents married each other on June 30, 1985, and the marriage was terminated on January 31, 1996. Custody of the applicant was awarded to his mother and he is presently residing in Honduras with his mother. The applicant is seeking to become a naturalized citizen under section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433.

The acting district director reviewed the record and concluded that the applicant had failed to establish that he was in the legal and physical custody of his father and denied the application accordingly.

On appeal, the applicant's father states that, in the applicant's case, the court ordered shared parental responsibilities, which he interprets as joint custody.

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 birthday as of February 27, 2001. The applicant was 14 years and 9 months old on February 27, 2001. Therefore, the applicant is eligible for benefits under the CCA.

Section 322 of the Act in effect on February 27, 2001, provides that:

(a) 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).

The present Act at section 322(a)(4) requires that the child be temporarily in the United States pursuant to a lawful admission, and be maintaining such lawful status. The applicant has failed to satisfy that requirement.

8 C.F.R. § 322.1 provides, in pertinent part, in the definition of the term "legal custody" that:

(2) In the case of a child of divorced or legally separated parents, the Service will find a U.S. citizen parent to have legal custody of a child, for the purpose of the CCA, where there has been an award of primary care, control and maintenance of a minor child to a parent by a court of law...The Service will consider a U.S. citizen parent who has been awarded "joint custody," to have legal custody of a child.

The court awarded the applicant's mother "primary residential status and she retains jurisdiction over the issues of child custody and visitations." The court also ordered shared parental responsibilities. The court order clearly shows that the

applicant's mother was awarded primary custody of the child and that is not superseded by the award of shared parental responsibility.

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. Therefore, the appeal will be dismissed.

ORDER: The appeal is dismissed.