

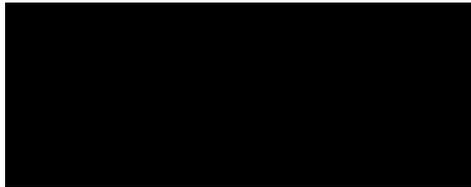
identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY



FILE: [Redacted] Office: MIAMI, FLORIDA Date: MAY 24 2008

IN RE: Applicant: [Redacted]

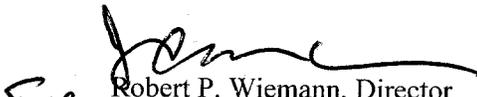
APPLICATION: Application for Certificate of Citizenship under Section 320 of the Immigration and Nationality Act, 8 U.S.C. § 1431, and Section 322 of the Immigration and Nationality Act; 8 U.S.C. § 1433.

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

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

The record reflects that the applicant was born in Haiti on November 22, 1991. The applicant's father, [REDACTED] was born in Haiti, and he became a naturalized U.S. citizen on August 25, 1999, when the applicant was seven years old. The applicant's mother [REDACTED] was born in Haiti, and she is not a U.S. citizen. The record reflects that the applicant's parents married in Haiti in 1996. The applicant was admitted into the United States pursuant to a lawful admission for permanent residence on July 30, 2000, when he was eight years old. The applicant presently seeks a certificate of citizenship pursuant to sections 320 and 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1431 and 1433.

The district director concluded the applicant had failed to establish that he resides in the physical custody of his U.S. citizen parent. The application was denied accordingly.

On appeal, the applicant, through his father, asserts that he has a right to attend school in Haiti. The applicant asserts further that he will return to the United States to live by June 2006.

Section 322 of the Act applies to children born and residing outside of the United States and states, in pertinent part, 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 [now Secretary, Homeland Security "Secretary"] shall issue a certificate of citizenship to such applicant upon proof, to the satisfaction of the Attorney General [Secretary], 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 and physical custody of the applicant

(5) The child is temporarily present in the United States pursuant to a lawful admission, and is maintaining such lawful status.

Section 101(a)(33) of the Act, 8 U.S.C. § 1101(a)(33), states that, “[t]he term “residence” means the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent.” The Board of Immigration Appeals clarified in *Matter of Jalil*, 19 I&N Dec. 679 (BIA 1988), that the maintenance of financial interests, the retention of a house, or the intention to return does not establish a person’s “dwelling place in fact” for purposes of section 101(a)(33) of the Act.

The evidence in the record reflects that the applicant’s U.S. citizen father resides in Florida. The evidence reflects further that the applicant resides with his non-citizen mother in Haiti. The applicant has therefore failed to establish that he resides outside of the United States in the physical custody of his U.S. citizen parent. The AAO notes further that the applicant obtained U.S. lawful permanent resident status in 2000. The applicant has thus additionally failed to establish that he is temporarily present in the U.S. pursuant to a lawful admission. Accordingly, the applicant does not qualify for citizenship under section 322 of the Act

The AAO finds that the applicant also does not qualify for citizenship under section 320 of the Act. Section 320 of the Act states in pertinent part that:

- (a) 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.

The evidence in the record reflects that the applicant resides in Haiti. The applicant has therefore failed to establish that he resides in the United States in the physical custody of his U.S. citizen father. Accordingly, the applicant does not qualify for citizenship under section 320 of the Act.

8 C.F.R. 341.2(c) states that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. *See also* § 341 of the Act, 8 U.S.C. § 1452. The applicant has not met his burden and the appeal will be dismissed.

**ORDER:** The appeal is dismissed.