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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:

AUG 20 2002

IN RE: Applicant:



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

The applicant was born on April 18, 1987, in Cuba. The applicant's adoptive father [REDACTED] was born in Cuba in May 1965 and became a naturalized U.S. citizen on November 13, 1995. The applicant's adoptive mother, [REDACTED] was born in Cuba in October 1964 and became a naturalized United States citizen on December 21, 1993. The applicant's parents married each other on May 19, 1986. The applicant was paroled into the United States on October 21, 1999, and a Memorandum of Creation of Record of Lawful Permanent Residence was approved on March 24, 2001. The applicant is seeking to become a naturalized citizen under section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1431.

The district director reviewed the record under the provisions of sections 320 and 101(b)(1)(E) of the Act, 8 U.S.C. 1101(b)(1)(E), and concluded that the applicant had failed to establish that she had been in the legal custody of the adopting parents for at least two years prior to filing the application for certificate of citizenship. The district director denied the application accordingly.

On appeal, the applicant's adoptive mother states that the applicant has been under their care since October 1999. She indicates that the Service turned the applicant over to them after they had met the requirements for custody.

The record contains a Final Judgment of Adoption dated September 11, 2001.

Section 322 of the Act was amended by the Child Citizenship Act of 2000, Pub.L. No. 106-395, 114 Stat. 1631 (CCA), effective February 27, 2001, and provides benefits only to those persons who had not yet reached their 18th birthday. The applicant was 13 years and 10 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 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 United States citizen parent if the child satisfies the requirements applicable to adopted children under section 101(b) (1).

Section 101(b) (1) of the Act presently defines the term "child" as an unmarried person under twenty-one years of age who is-:

(E) (i) a child adopted while under the age of sixteen years if the child has been in the legal custody of, and has resided with, the adopting parent or parents for at least two years....

Section 2 of the Immigration and Nationality Act, Amendments of 1986 (Pub.L. 99-653, Nov. 14, 1986, 100 Stat. 3655) omitted the requirement that the 2-year period of legal custody and residence with adoptive parents be "after" adoption. Effective for visas issued, and admissions occurring, on or after November 14, 1985. See Matter of Ho, 19 I&N Dec. 582 (BIA 1988), footnote p. 583.

The record reflects that (1) the applicant was adopted while under 16 years of age, (2) the applicant was in the adoptive parent's legal custody as early as October 22, 1999, according to the Special Power of Attorney document in the record, (3) the applicant has resided with the adoptive parents since that date, and (4) the applicant was residing with her adoptive parents on January 29, 2002, when the application was filed, a period of 2 years, 3 months and 7 days. Therefore, she has satisfied the requirements of section 101(b) (1) (E) of the Act and the appeal will be sustained.

ORDER: The appeal is sustained. The acting district director's decision is withdrawn, and the application is approved.