



EA

U.S. Department of Justice

Immigration and Naturalization Service

Deleting data deleted to prevent clearly unwarranted invasion of personal privacy

[Redacted]

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

FILE

[Redacted]

Office: Philadelphia

Date:

AUG 26 2002

IN RE: Applicant:

[Redacted]

APPLICATION:

Application for Certificate of Citizenship under Section 341(a) of the Immigration and Nationality Act, 8 U.S.C. 1452(a)

IN BEHALF OF APPLICANT:

[Redacted]

Public Copy

INSTRUCTIONS:

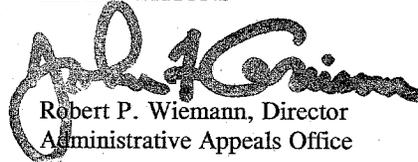
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

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 which 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 which 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, Philadelphia, Pennsylvania, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant was born on December 19, 1984, in India. The applicant's father, [REDACTED] was born in India in June 1960 and became a naturalized U.S. citizen on July 6, 2000. The applicant's mother, [REDACTED] was born in India in June 1965 and never had a claim to United States citizenship. The applicant's parents married each other on July 15, 1983, and divorced on October 27, 1994. The applicant was lawfully admitted for permanent residence on April 19, 1997. 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 acting district director reviewed the record and concluded that legal custody of the applicant was not given to the father and denied the application accordingly.

On appeal, counsel states that the Consulate would make sure that the father had legal custody of the child as a normal procedure since it will not condone the kidnapping of any child between one parent or the other. Counsel submits another agreement between the applicant's parents apparently finalized in October 2001, stating that the applicant and his sibling would remain with the father, and the mother would have the right to meet them whenever they came to India.

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 16 years and 2 months old on February 27, 2001. Therefore, he is eligible for the benefits of the CCA.

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 record reflects that (1) one of the applicant's parents is a U.S. citizen, (2) the applicant is under the age of 18 years, and (3) he is residing in the United States in the physical custody of the citizen parent pursuant to a lawful admission for permanent residence after being classified as a stepchild of a U.S. citizen in March 1996.

The divorce decree in the record does not specify which parent has custody. The record contains an affidavit by the applicant's mother in which she states that a decree of divorce between the applicant's parents has been passed by a District Judge on October 27, 1994. The applicant's mother states that the applicant and his sibling are in her custody, but she has no objection if the children visit abroad, and they are free from her side to go anywhere they wish, and reside anywhere. A second affidavit was discussed above.

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 or other appropriate government entity pursuant to the laws of the state or country of residence. The Service will consider a U.S. citizen parent who has been awarded "joint custody," to have legal custody of a child. In cases where the issue of custody is not explicitly addressed in the divorce decree or separation agreement, a determination of legal and/or joint custody shall be made based on the laws of the State or country of residence.

The record reflects that the parent's divorce decree does not explicitly address the issue of custody. Further, the record fails to contain evidence that the mother's affidavit or the second affidavit submitted on appeal establishes legal or joint custody for the purposes of the CCA, notwithstanding the fact that the first document was accepted by the U.S. Consulate for the purpose of issuing the applicant an immigrant visa.

The record does not contain an authoritative affirmation from the Library of Congress Law Review Department, or from the American Embassy in India, or from an Indian Embassy or Consulate in the United States, regarding the bona fides of the affidavit submitted on appeal and whether it satisfies the CCA.

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.



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 his place of residence.

ORDER: The appeal is dismissed.