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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:



Office: Miami

Date:

NOV 20 2002

IN RE: Applicant:



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:

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 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 January 14, 1984, in Haiti. The applicant's father, [REDACTED] was born in Haiti in December 1964 and became a naturalized U.S. citizen on January 25, 2000. The applicant's mother, [REDACTED] was born in Haiti and never had a claim to United States citizenship. The applicant's parents never married each other. The applicant was lawfully admitted for permanent residence on June 30, 1995. 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 district director reviewed the record and concluded that the applicant was not residing in the physical custody of the citizen parent and denied the application accordingly.

On appeal, the applicant's father states that he is not separated from his daughter but she did not stay at home (with him) because he was working all day.

The record reflects that the applicant lives with the paternal grandmother who claims the applicant on her income tax returns.

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 17 years and 1 month old on February 27, 2001. Therefore, she 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).

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. The applicant has failed to meet the requirements of



section 320(a)(3) of the Act. 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 her place of residence.

ORDER: The appeal is dismissed.