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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

[REDACTED]

FILE: [REDACTED] Office: Miami

Date: OCT 22 2002

IN RE: Applicant: [REDACTED]

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:

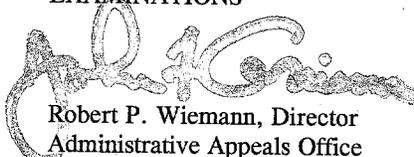
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

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 December 11, 1983, in Thailand. The applicant's father, [REDACTED] was born in Thailand and never had a claim to U.S. citizenship. The applicant's mother, [REDACTED] was born in Thailand in February 1959 and became a naturalized U.S. citizen on May 14 2001. The applicant's parents married each other in June 1983 and divorced in June 1986. The applicant was classified as the stepson of a U.S. citizen, and he was lawfully admitted for permanent residence on June 21, 1995, at the age of 11 years and 6 months, to join his mother. 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 he was unable to determine that the applicant has been in the physical and legal custody of his U.S. citizen mother and denied the application accordingly.

On appeal, the applicant's mother states that the applicant has always been in her legal custody as evidenced in the record.

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 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).

Legal custody of a child as an element of derivation contained in the 1940 statute, and in the present law, may follow judicial proceedings which either terminate the marriage completely, as by

absolute divorce, or which merely separate the parties without destroying the marital status. Generally, the question of legal custody may be determined by the law of a state or by the adjudication of a court, whether this be in proceedings relating to the termination of the marital relationship or in separate proceedings dealing solely with the question of the child's custody. In the absence of such determination, the parent having actual uncontested custody of the child is regarded as having the requisite "legal custody" for immigration purposes, provided that the required "legal separation" of the parents has taken place.

The record contains a Registration of Divorce dated June 10, 1986, relating to the applicant's parents. The document fails to make any determination regarding the custody of any children. However, it is clear from the documentation in the record that the applicant's custody was uncontested, and he was granted an immigrant visa to join his mother in the United States. The record now contains sufficient documentary evidence in the form of income tax records, a school physical examination, a mortgage contract and other items indicating that the applicant has been living in his mother's uncontested custody since his arrival in the United States in 1995. He became a U.S. citizen automatically when his mother naturalized in May 2001, the date the last condition was fulfilled.

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 met that burden, and the appeal will be sustained.

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